S. HRG. 98-24

THE INTERNATIONAL TELECOMMUNICATIONS ACT OF 1983

HEARINGS

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 999

TO AMEND THE COMMUNICATIONS ACT OF 1934 TO PROVIDE FOR IMPROVED INTERNATIONAL TELECOMMUNICATIONS, AND FOR OTHER PURPOSES

MAY 10 AND 11, 1983

Serial No. 98-24

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

22-315 O WASHINGTON : 1983

S261-41

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

BOB PACKWOOD, Oregon, *Chairman*

BARRY GOLDWATER, Arizona	ERNEST F. HOLLINGS, South Carolina
JOHN C. DANFORTH, Missouri	RUSSELL B. LONG, Louisiana
NANCY LANDON KASSEBAUM, Kansas	DANIEL K. INOUYE, Hawaii
LARRY PRESSLER, South Dakota	WENDELL H. FORD, Kentucky
SLADE GORTON, Washington	DONALD W. RIEGLE, JR., Michigan
TED STEVENS, Alaska	J. JAMES EXON, Nebraska
BOB KASTEN, Wisconsin	HOWELL HEFLIN, Alabama
PAUL S. TRIBLE, JR., Virginia	FRANK R. LAUTENBERG, New Jersey

GERALD J. KOVACH, *Chief Counsel*
RALPH B. EVERETT, *Minority Staff Director*

SUBCOMMITTEE ON COMMUNICATIONS

BARRY GOLDWATER, Arizona, *Chairman*

LARRY PRESSLER, South Dakota	ERNEST F. HOLLINGS, South Carolina
TED STEVENS, Alaska	DANIEL K. INOUYE, Hawaii
SLADE GORTON, Washington	WENDELL H. FORD, Kentucky

CONTENTS

	Page
Opening statement by Senator Goldwater	1
Text of S. 999	3

CHRONOLOGICAL LIST OF WITNESSES

MAY 10, 1983

Astrain, Santiago, director general, Intelsat; Christopher J. Vizas II, executive vice president, Orion Satellite Corp.; and Richard R. Colino, candidate for director general of Intelsat	81
Attachments of Mr. Astrain	86
Prepared statement of Mr. Vizas	104
Questions of the committee and the answers thereto	107
Prepared statement of Mr. Colino	112
Charyk, Dr. Joseph V., president and chief executive officer, Communications Satellite Corp	70
Prepared statement	76
Fowler, Hon. Mark S., Chairman, Federal Communications Commission	40
Prepared statement	48
Gardner, Micahel R., attorney	59
Additional material	66
Latham, Donald C., Deputy Under Secretary of Defense for Communications, Command, Control, and Intelligence, Department of Defense	51
Prepared statement	55

MAY 11, 1983

Opening statement by Senator Pressler	170
Dawson, Mimi Weyforth, Commissioner, Federal Communications Commission	128
Prepared statement	130
Hilsman, Lt. Gen. William J., Director, Defense Communications Agency	121
Prepared statement	123
Spero, Joan E., vice president, International Corporate Affairs, American Express Co.; and Phillip C. Onstad, assistant to the president and general counsel, Control Data Corp.:	
Prepared statement of Ms. Spero	174
Prepared statement of Mr. Onstad	176
Wright, V. Orville, president and chief operating officer, MCI Communications Corp.; Howard A. White, executive vice president and general counsel, U.S. Telephone & Telegraph Corp.; Willard Demory, assistant bureau chief for International, the Common Carrier Bureau, Federal Communications Commission; Richard B. Nichols, vice president, AT&T Long Lines; and Eugene F. Murphy, chairman, RCA Global Communications, Inc.:	
Mr. Wright:	
Prepared statement	138
Letter of June 9, 1983	141
Mr. White:	
Prepared statement	145
Questions of the committee and the answers thereto	147
Mr. Nichols:	
Prepared statement	152
Questions of the committee and the answers thereto	155
Mr. Murphy:	
Prepared statement	161
Letter of May 20, 1983	166

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

	Page
Control Data Corp. Technical, comments	191
Goldstein, Irving, president, Communications Satellite Corp., letter of June 9, 1983	169
Henrizues, Vico E., president, Computer & Business Equipment Manufacturers Association, letter of June 10, 1983	210
International Business Machines Corp., statement	201
Johnson, Charles P., chairman, Independent Data Communications Manufacturers Association, Inc., letter of June 22, 1983	213
M/A-Com., Inc., statement	205
Spero, Joan E., chairman, Committee on Transborder Data Flows, U.S. Council for International Business, letter of May 24, 1983	209
Tobin, Maurice B., statement	207

INTERNATIONAL TELECOMMUNICATIONS ACT OF 1983

TUESDAY, MAY 10, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:28 a.m., in room SR 232-A, Russell Senate Office Building, Hon. Barry Goldwater (chairman of the subcommittee) presiding.

Staff members assigned to these hearings: Riley K. Temple, staff counsel, and Thomas W. Cohen, minority staff counsel.

OPENING STATEMENT BY SENATOR GOLDWATER

Senator GOLDWATER. The meeting will come to order.

Welcome to the Communications Subcommittee hearing on S. 999, the International Telecommunications Act of 1983.

S. 999 in most respects resembles S. 2469 of the last Congress, a bill that was approved unanimously by the full Commerce Committee. Like S. 2469, this bill makes it clear that FCC jurisdiction must encompass marketplace competition in the provision of international telecommunications services. It recognizes that our commitment to reliance on the private sector need not, given rapidly advancing technology, cannot, and will not, stop at our borders.

S. 999 gives the FCC and the executive branch a blueprint for dealing with a growing, competitive international telecommunications marketplace. S. 999 establishes a new goal in trying to coordinate international telecommunications policymaking.

For years my colleagues and I have complained that the United States lacks a high level focal point for the development of international telecommunications policy. Our past efforts in this area simply resulted in turf fights between the Departments of State and Commerce over which agency has preeminent authority. This bill avoids that executive branch infighting and creates the Office of the Special Representative for Telecommunications and Information.

The Special Representative would have the rank of Ambassador, serve as the principal U.S. representative at international conferences, and would be the President's chief adviser on international telecommunications policy. Only the coordinating functions of the Departments of State and Commerce would be assumed by the Special Representative, not the foreign policy or domestic telecommu-

nications activities of those agencies. The turf fights are, therefore, avoided.

This high level focal point is long overdue. We hope that the administration will be able to endorse our reorganization proposal at the earliest possible date, and at such time we expect to be able to ask administration witnesses to testify on this issue.

Now, I realize that the administration has proposed creation of a new Department of Trade. That proposal is not inconsistent with our plan, and besides, my experience tells me that the creation of a new department will take quite a while. U.S. international telecommunications policymaking needs help now. We have 13 major conferences to be held between June of this year to September 1989, and the United States can ill afford to continue its ad hoc approach to conference preparation. The Special Representative needs to be appointed as soon as possible.

Now, Mr. Fowler, I am glad to see from your statement that you support our position on this. You are to be commended for elevating the level of attention at the FCC on international telecommunications matters.

As Chairman of the Commission, you have a unique perspective which allows you to appreciate both the domestic and international implications of your decisions, and I encourage you to work in this area.

Before I conclude, Mr. Fowler, I have, as you know, a lifelong interest in the field of communications. I think one of the great advances that our children will see, not in the coming years, but in the coming hours or days, will be the extremely easy and rapid communication between peoples around this world. We already have the ability for instant translation, where we can talk with a person in any other language, not with equipment we might have in the house today, but with equipment that is available and will be cheaply available soon.

It is absolutely mandatory that this position be set up and expanded. I think we have attended our last world conference on frequencies where we appoint somebody in the last 15 minutes and expect him to travel halfway around the world and come home with the United States having a decent share of the frequency spectrum. And now that our frequency spectrum is way up in the gigahertz and God knows how soon it is going to go past that, this has become to me one of the most important international problems that we can face.

Again, I am very happy that you have put yourself in the position of backing it, and we look forward to hearing from other people this morning on this subject.

I believe completely, while I may not be alive to see it, that very shortly talking with countries or people anyplace in this world or in the universe will be possible. I have already had four different debates with people in other countries by bouncing the language off satellites, and that is ancient now.

[The bill follows:]

II

98TH CONGRESS
1ST SESSION

S. 999

To amend the Communications Act of 1934 to provide for improved international telecommunications, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, APRIL 5), 1983

Mr. BAKER (for Mr. GOLDWATER) (for himself, Mr. PRESSLER, and Mr. HOLLINGS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To amend the Communications Act of 1934 to provide for improved international telecommunications, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "International Telecommunications Act of 1983".

FINDINGS

SEC. 2. The Congress hereby finds and declares that—

(1) rapid advances in international telecommunications technologies are making possible increased

competition among providers of international telecommunications services;

(2) competition is a more efficient regulator than Government of the provision of diverse international telecommunications services and, as competition continues to develop, deregulation of international telecommunications carriers and services should occur;

(3) it is essential to encourage the entry of new carriers in the offering of international telecommunications services and facilities; and

(4) the Nation's international telecommunications carriers, facilities, and services are vital to meeting the needs of national defense and emergency preparedness and to maintaining the economic competitiveness and technological leadership of the United States.

TITLE I—GENERAL

FEDERAL COMMUNICATIONS COMMISSION; INTERNATIONAL TELECOMMUNICATIONS

SEC. 101. The Communications Act of 1934, as amended (47 U.S.C. 151), is amended by inserting immediately after title V the following new title:

"TITLE VI—INTERNATIONAL TELECOMMUNICATIONS

"DEFINITIONS

"SEC. 601. For the purposes of this title, unless the context otherwise requires, the term—

"(1) 'foreign or international telecommunications', 'foreign or international telecommunications service' means telecommunications or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and mobile station located outside the United States;

"(2) 'information service' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information which may be conveyed via telecommunications, except that such service does not include any use of any such capability for the management, control, or operation of an international telecommunications system or the management of an international telecommunications service;

"(3) 'regulated telecommunications service' or 'regulated service' means any international telecommunications service designated by the Commission pursuant to this Act and which the Commission determines shall be regulated pursuant to this Act, and any inter-

national telecommunications service or facilities not subject to effective competition as determined by the Commission pursuant to section 604(b) of this title;

"(4) 'resale' means the reoffering, with or without adding value, by any person for a profit of any international telecommunications service which has been obtained from a carrier;

"(5) 'sharing' or 'shared use' means the collective use of telecommunications services or facilities with each user paying the telecommunications-related costs associated with subscription to and collective use of the telecommunications services or facilities according to its pro rata usage of such services or facilities;

"(6) 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information, by means of electromagnetic transmission, with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission;

"(7) 'international telecommunications carrier' or 'carrier' means any person, including any government

or independent government entity, which offers any international telecommunications service for hire. A person engaged in any nontelecommunications activities, in providing any information service or information software, in producing or marketing equipment, or a person engaged in broadcasting, or in providing any cable service, shall not, insofar as such person is so engaged, be deemed a carrier. The shared use of telecommunications equipment, facilities or services among Government agencies, or the provison of telecommunications equipment facilities or services by any Government agency to any other Government agency, shall not be sufficient to deem such Government agencies to be a carrier;

"(8) 'transmission facilities' or 'telecommunications facilities' means equipment (including wire, cable, microwave, satellite, and fiber optics) which transmit information by electromagnetic means or which directly support such transmission, but does not include customer-premises equipment; and

"(9) 'United States' means the several States and territories, the District of Columbia, and the possessions of the United States.

"STATEMENT OF POLICY

"SEC. 602. (a) It is the policy of the United States to rely wherever and whenever possible on marketplace competition and on the private sector to provide international telecommunications services, and to reduce unnecessary regulation and to encourage entry by new carriers into the international telecommunications marketplace. Marketplace competition will result in technological innovation, operating efficiencies, and availability of a wide variety of telecommunications technologies that are now or may become available in the future, and will promote the equitable and efficient use of such technologies to provide international telecommunications services. Where effective competition does not now exist, it is the policy of the United States to encourage the development of such competition. Whenever the Commission finds it necessary to regulate international telecommunications services or facilities which are not subject to effective competition, such regulation shall be the minimum needed to accomplish the purposes of this Act. It shall be presumed that there are no basic technological, operational, or economic factors which would necessarily preclude the provision of any international telecommunications service under conditions of competition.

"(b) The Congress recognizes that the provision of international telecommunications services, and the planning, con-

struction, and ownership of international telecommunications facilities, are necessarily joint undertakings between United States persons and representatives of numerous sovereign nations. Accordingly, the interests of those sovereign nations are to be considered in the implementation of United States policy.

"(c) It shall be the policy of the United States to promote, including through meetings with foreign telecommunications entities, the deregulation of the resale or shared use of any international telecommunications service.

"(d) It shall be the policy of the United States to promote the interconnection of international telecommunications facilities based upon the cost of providing such facilities.

"AUTHORITY OF THE COMMISSION

"SEC. 603. (a) The Commission shall exercise only so much of the powers conferred upon it under this Act as is essential to the purposes of this title. The Commission shall revise, reduce, or eliminate any rule or regulation prescribed pursuant to this Act, and exempt any person in whole or in part from the requirements of this Act with respect to any international telecommunications service or any carrier operating in any market or a geographic area as competition develops unless such revision, reduction, or elimination thereof may result in a significant adverse impact upon the national defense and security or emergency preparedness or upon the

economic competitiveness and viability of United States suppliers of telecommunications equipment and international telecommunications services relative to competing foreign suppliers and their United States affiliates.

"(b) The Commission shall have continuing authority over the provision of regulated international telecommunications services.

"CLASSIFICATION OF SERVICES

"SEC. 604. (a) Not later than 30 days after the date of enactment of this title, the Commission shall identify, and cause to be published in the Federal Register, a list of those international telecommunications services which are regulated by the Commission on the date of enactment of this title.

"(b)(1) The Commission may classify or reclassify as a regulated international telecommunications service any international telecommunications services or facilities where it determines after a hearing that—

"(A) such services or facilities are not subject to effective competition;

"(B) Federal regulation of such services is required to accomplish the purposes of this title; and

"(C) the benefits of such regulation outweigh the costs.

"(2) In making such a determination under paragraph (1) the Commission shall consider—

"(A) the number and size of unaffiliated providers of service or facilities;

"(B) the extent to which service or facilities are available from unaffiliated providers in the relevant geographic area or market;

"(C) the ability of such unaffiliated providers to make such service or facilities readily available at comparable rates, terms, and conditions;

"(D) whether the service of facilities are necessary to the Nation during a state of public peril or disaster or other national emergency;

"(E) the extent to which United States carriers are accorded fair access to or interconnection in foreign markets in the provision of international telecommunications service or facilities; and

"(F) other indicators of the extent of competition.

"TRANSITIONAL PROVISIONS OF CERTAIN SERVICES

"SEC. 605. (a) Each international telecommunications service which is being provided under tariff on the date of the enactment of this title shall continue to be provided under tariff for a period of not less than 1 year from such date.

"(b) Not later than 1 year after the date of enactment of this title, the Commission shall determine, after an expedited hearing in which any interested party may join, which of the international telecommunications services described in sec-

tion 604(a) must continue to be regulated pursuant to section 604(b)(1).

"(c)(1) Any international telecommunications service for which the Commission fails to make the determination specified in section 604(b) shall be deregulated.

"(2) Upon its own motion, or upon petition, the Commission shall revise at least once every 2 years any determination that any international telecommunications service is to be regulated pursuant to section 604(b). Upon making a determination that a service is subject to effective competition, the Commission shall deregulate such service.

"INTERCONNECTION

"SEC. 606. (a) Every international telecommunications carrier—

"(1) shall, if a reasonable request is made, establish interconnection of its regulated service or facilities—

"(A) with any telecommunications carrier;

"(B) with any telecommunications facility or private or Government telecommunications system; and

"(C) with any customer premise equipment which is owned or leased by a customer of such carrier;

"(2) may not discriminate in an unreasonable or unjust manner with respect to the charges, terms, and conditions for interconnection of its regulated service or facilities; and

"(3) such charges, terms or conditions for interconnection shall be based on cost of such services or facilities provided for such interconnection.

"(b) For purposes of subsection (a)(1)(A), the Commission shall require that—

"(1) if any telecommunications carrier engages both in the offering for hire of international telecommunications services and in the offering for hire of domestic communications services, then such telecommunications carrier shall be treated as a separate domestic telecommunications carrier and a separate international telecommunications carrier for purposes of administering interconnection requirements;

"(2) in any case where such separate domestic telecommunications carrier furnishes interconnection to such separate international telecommunications carrier, any interconnection which such separate domestic telecommunications carrier furnishes to other international telecommunications carriers shall be (A) equal in type and quality; and (B) made available at the same rates and upon the same terms and conditions; and

"(3) in any case in which such separate international telecommunications carrier furnishes interconnection to such separate domestic telecommunications carrier, any interconnection which such separate international telecommunications carrier furnishes to other domestic telecommunications carriers shall be (A) equal in type and quality; and (B) made available at the same rates and upon the same terms and conditions.

"(c) Any person who violates any provision of this section or any rule or order promulgated thereunder shall be liable to the United States for an amount not to exceed $250,000 in an action commenced by the Attorney General.

"CARRIER CONTRACTS

"SEC. 607. (a) The Commission shall have authority to vacate or require modification of, in whole or in part, any contract, agreement, or arrangement entered into after the date of enactment of this title between or among United States carriers related to any regulated international telecommunications service filed with the Commission under this Act, if the Commission determines that such contract, agreement, or arrangement is not consistent with this Act, or such contract, agreement, or arrangement unjustly or unreasonably discriminates against any carrier.

"(b) The Commission shall have authority to declare any contract, agreement or arrangement, or any portion thereof, or any practice or act required thereby, between United States and foreign carriers related to any regulated international telecommunications service filed with the Commission under this Act, to be unlawful if the Commission determines that such contract, agreement, arrangement, or any portion thereof, or such practice or act violates any provisions of this Act.

"INTERNATIONAL TELECOMMUNICATIONS FACILITIES

"SEC. 608. (a)(1) The Commission may assess United States carriers' proposals for the construction and utilization of international telecommunications facilities.

"(2) In assessing United States carriers' proposals, the Commission shall consult with affected United States carriers, including persons seeking to participate in ownership and operation of international telecommunications facilities, and appropriate Federal agencies.

"(b) The Commission or any Commissioners may meet with representatives of foreign telecommunications entities to exchange information, except that—

"(1) proper notice shall be given to all interested parties prior to any such meeting and such parties shall be given an opportunity to comment on the subjects to be discussed;

"(2) to the maximum extent feasible any meetings with such representatives shall be public, and a report of such proceedings shall be made part of the public record; and

"(3) any data obtained by the Commission during such meetings and used by the Commission must be made available to the public. The Commission must explain the manner in which such data was used.

"(c) It shall not be unlawful for United States carriers jointly to meet together or with foreign telecommunications entities for the purposes of planning or agreeing to international facilities plans developed pursuant to this section: *Provided, however,* That this subsection shall not exempt any carrier from the provisions of the antitrust laws for any action taken by such carrier which is a violation of such laws when taken by a single carrier.

"APPLICABILITY OF TITLE

"SEC. 609. The provisions of this title shall be applicable only to international telecommunications services. Except to the extent otherwise provided in this title and by the International Telecommunications Act of 1983, the provisions of this Act which, immediately prior to the date of the enactment of the International Telecommunications Act of 1983, were applicable to international telecommunications services,

including facilities used in connection therewith, shall continue to be applicable to such services and facilities.".

TITLE II—INTERNATIONAL TELECOMMUNICATIONS

SHORT TITLE

SEC. 201. This title may be cited as the "International Telecommunications and Information Coordination Act of 1983".

FINDINGS AND PURPOSE

SEC. 202. (a) The Congress finds that—

(1) the United States telecommunications and information industries make an important contribution to international commerce and are vital to the economy, national defense, security, and emergency preparedness of the United States;

(2) although many governments of the world have recognized the strategic importance of their telecommunications and information industries and have developed policies to promote those industries, the United States has no coordinated international telecommunications and information policies;

(3) the authority and responsibility to develop such policies is divided among Federal agencies on a conflicting and often confusing basis; and

(4) the United States must have an effective mechanism for the development of telecommunications and information policies. The mechanism must coordinate within the Federal Government and between the Federal Government and the private sector.

(b) The Congress declares that it is the policy of the United States—

(1) to maintain and promote a viable, strong, and technologically competitive telecommunications industry;

(2) to encourage and assist the competitive provision of telecommunications and information goods and services in international commerce;

(3) to ensure the preservation and enhancement of the principles of the free flow of telecommunications services and information throughout the world;

(4) to ensure the existence of effective non-political international telecommunications organizations and other entities;

(5) to ensure the equitable treatment of United States and foreign enterprises in all international markets of telecommunications and information goods and services; and

(6) to ensure the effective coordination and representation of United States interests in international forums.

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TELECOMMUNICATIONS AND INFORMATION

SEC. 203. (a) There is established within the Executive Office of the President the Office of the Special Representative for Telecommunications and Information (hereinafter in this section referred to as the "Office").

(b)(1) The Office shall be headed by the Special Representative for Telecommunications and Information who shall be appointed by the President, by and with the advice and consent of the Senate. Any nomination of the Special Representative for Telecommunications and Information submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Commerce, Science and Transportation. The Special Representative for Telecommunications and Information shall hold office at the pleasure of the President and shall have the rank of Ambassador.

(2) There shall be in the Office a Deputy Special Representative for Telecommunications and Information who shall be appointed by the President, by and with the advice and consent of the Senate. Any nomination of a Deputy Special Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee

on Commerce, Science and Transportation. The Deputy Special Representative for Telecommunications and Information shall hold office at the pleasure of the President.

(3) The Special Representative for Telecommunications and Information shall—

(A) be the chief representative of the United States at international telecommunications and information conferences;

(B) advise the President and Congress with respect to international telecommunications and information policies and coordinate executive branch development of such policies;

(C) be responsible for making reports to Congress with respect to the matters set forth in subparagraphs (A) and (B);

(D) be chairman of the task force established pursuant to section 204 of this Act; and

(E) be responsible for such other functions as the President may direct.

(4) The Deputy Special Representative for Telecommunications and Information shall have as its principal function the coordination of telecommunications and information policymaking in the executive branch as the Special Representative for Telecommunications and Information may direct.

(c) The Special Representative for Telecommunications and Information may, for the purpose of carrying out his functions under this section—

(1) subject to the civil service and classification laws, select, appoint, employ, and fix the compensation of such officers and employees as are necessary and prescribe their authority and duties;

(2) employ experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate individuals so employed for each day (including traveltime) at rates not in excess of the maximum rate of pay for grade GS–18 as provided in section 5332 of title 5, United States Code, and while such experts and consultants are so serving away from their homes or regular place of business, to pay such employees travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently;

(3) promulgate such rules and regulations as may be necessary to carry out the functions vested in the Office;

(4) utilize, with their consent, the services, personnel, and facilities of other Federal agencies; and

(5) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the work of the Office and on such terms as the Special Representative for Telecommunications and Information may deem appropriate, with any agency or instrumentality of the United States, or with any public or private person, firm, association, corporation, or institution.

(d) The Special Representative for Telecommunications and Information shall, to the extent he deems it necessary for the proper administration and execution of the telecommunications and information policies of the United States, draw upon the resources of the Department of State, the Department of Commerce, the International Communications Agency, and the United States Trade Representative, and consult with Federal agencies in connection with the performance of his functions.

(e) There are authorized to be appropriated to the Office of Special Representative for Telecommunications and Information such amounts as may be necessary for the purpose of carrying out its functions for fiscal year 1984 and each fiscal year thereafter, any part of which is within the 5-year period beginning on the date of the enactment of this Act.

ESTABLISHMENT OF THE TASK FORCE

SEC. 204. (a) There is established in the executive branch an International Telecommunications and Information Task Force (hereinafter in this title referred to as the "Task Force"). The Task Force shall be the principal coordinating body for the development of United States telecommunications and information policies.

(b) The membership of the Task Force shall consist of—

(1) The Special Representative for Telecommunications and Information; the Deputy Special Representative for Telecommunications and Information; the Secretary of Commerce, the Secretary of State, the Secretary of Defense, the Attorney General, the United States Trade Representative, the Chairman of the Federal Communications Commission, the Assistant Secretary of State for Telecommunications Affairs, and the Director of the International Communications Agency; and

(2) the members of the Task Force designated in paragraph (1) may appoint a representative to serve in their place. The representative shall be an official of a rank no lower than that of Assistant Secretary or its statutory equivalent. In the case of the Federal Communications Commission, the Chairman may designate another Commissioner and the Director of the Interna-

tional Communications Agency may designate the Deputy Director of that agency. In the event that the Secretary of Commerce designates a representative, it shall be the Assistant Secretary for Telecommunications and Information.

(c) The Chairman of the Task Force shall be the Special Representative for Telecommunications and Information.

(d) Whenever the Task Force considers matters that affect the interests of Federal agencies not represented on the Task Force, the Special Representative may invite the heads of such agencies to designate representatives to participate in the relevant deliberations of the Task Force.

(e) Members of the Task Force shall serve without additional compensation, but shall be reimbursed for actual and necessary expenses, including travel expenses, incurred by them in carrying out the duties of the Task Force.

(f) The Task Force shall terminate upon the expiration of the 36-month period following the date of the enactment of this title, except that the President may, at any time during the 6-month period preceding the expiration of the term of authority of the Task Force, extend the existence of the Task Force for a period of not more than 3 years. Any extension shall be made by Executive order. If the President chooses not to extend the Task Force, he shall, by Executive order,

assign the responsibilities and authorities of the Task Force to one department or agency.

POWERS OF THE TASK FORCE

SEC. 205. (a) The Task Force shall assist the Special Representative in the development of consistent and comprehensive United States international telecommunications and information policies and shall advise the President with respect to those policies. In order to avoid duplicative and conflicting policies among Federal agencies, and to assure the greatest possible cooperation among such agencies, the Task Force shall—

(1) recommend to the Special Representative procedures for coordinating the policies of all Federal agencies involved in international telecommunications and information;

(2) review all significant policy determinations of Federal agencies, and all proposed statements of United States policy by such agencies, relating to international telecommunications and information, and approve, disapprove, or modify any such policy, determination, or proposed statement where necessary; and

(3) conduct a comprehensive study of the feasibility and desirability of alternatives to the International Telecommunication Union (ITU), and assess the alternatives which are reasonably available. The results of

such study shall be reported to the Congress within the 180-period following the date of the enactment of this Act.

The Task Force shall make recommendations to appropriate Federal agencies in accordance with the findings of this review. Those recommendations shall also be provided to the President and the appropriate committees of the Congress.

(b) The provisions of subsection (a)(2) shall not apply to any action or determination of an independent regulatory agency made pursuant to the rulemaking or adjudicatory procedures set forth in sections 553, 554, 556, or 557 of title 5, United States Code, or pursuant to comparable statutory rulemaking or adjudicatory procedures.

(c) The Task Force shall make recommendations and reports to the President and the Congress on a regular basis.

TRANSFER OF FUNCTIONS

SEC. 206. (a) All functions vested in the Secretary of State by section 5–201 of Executive Order 12046 of March 27, 1978, to the extent that they relate to the determination of policies and positions, are transferred to the Office of the Special Representative for Telecommunications and Information.

(b) All functions vested in the Secretary of Commerce by section 2–404 of Executive Order 12046 of March 27, 1978, to the extent that they relate to the determination and

coordination of plans and policies, and, to the extent its provisions relate to international telecommunications and information, by section 2–501 of Executive Order 12046 of March 27, 1978, are transferred to the Office of the Special Representative for Telecommunications and Information.

(c) All functions vested in the Director of the International Communications Agency by section 6 of Executive Order 12048 of March 27, 1978, to the extent that its provisions relate to responsibility for advising the President, are transferred to the Task Force.

ADMINISTRATIVE POWERS

SEC. 207. (a) For the purpose of carrying out its functions under this Act, the Task Force may—

(1) utilize those services, personnel, and facilities of the Department of State, the Department of Commerce, the International Communications Agency, and the United States Trade Representative, that are used for international telecommunications and information activities;

(2) utilize, with their consent, the services, personnel, and facilities of any other Federal agency; and

(3) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

(b) The Secretary of Commerce and the Secretary of State shall designate such employees as are necessary to serve as staff to the Task Force. The Special Representative for Telecommunications and Information shall designate a director for the staff of the Task Force.

ADVISORY COMMITTEE

SEC. 208. (a) The Task Force shall establish an Advisory Committee on International Telecommunications and Information (hereinafter in this title referred to as the "Committee") to provide overall policy advice to the Task Force with respect to the functions of the Task Force. The Committee shall be composed of not more than 30 individuals and shall include representatives of labor, manufacturers of telecommunications, information, and data processing equipment, other affected manufacturers, providers of telecommunications, information, and data processing services, other affected service industries, financial institutions, journalists, broadcasters, consumer interests, the legal profession, users of telecommunications services and equipment, and small business.

(b) The members of the Committee shall designate a Chairman and a Vice Chairman, who shall preside at meetings in the absence of the Chairman.

(c) The Committee shall meet at the call of the Chairman to provide policy advice, technical advice and informa-

tion, and advice on other factors relevant to the activities of the Task Force. A meeting of the Committee shall be held at least once each calendar quarter.

(d) The Task Force shall, before approving under this Act any statement of new United States policy relating to international telecommunications and information, consult with the Committee for the purpose of obtaining the views of the Committee on the effect of the proposed submission on the social and economic interests of the United States.

(e) The Task Force shall make available to the Committee such staff, information, personnel, and administrative services and assistance as may reasonably be required to carry out the activities of the Committee.

(f) The Task Force shall adopt procedures for consulting with and obtaining information and advice from the Committee on a continuing and timely basis. Such consultation shall include the provision of information to the Committee as to (1) significant issues and developments, and (2) overall objectives and positions of the United States with respect to the development of telecommunications and information policies. The Task Force shall not be bound by the advice or recommendations of the Committee but the Task Force shall inform the Committee of failures to accept such advice or recommendations. The Task Force shall submit an annual report to the appropriate committees of the Congress on consultations

with the Committee, issues involved in such consultations, and the reasons for not accepting any advice or recommendations of the Committee.

TITLE III—MISCELLANEOUS

TRANSITION OF COMMISSION AUTHORITY

SEC. 301. All orders, determinations, rules, regulations, permits, contracts, certificates, and privileges, which, pursuant to the provisions of titles II and III of the Communications Act of 1934, as amended—

(1) have been issued, made, granted, or allowed to become effective by the Federal Communications Commission; and

(2) were in effect prior to the enactment of this Act,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Commission, by any court of competent jurisdiction, or by operation of law.

INTERNATIONAL TELECOMMUNICATIONS

SEC. 302. The provisions of this Act, and the amendments made thereby, shall apply only to the provision of international telecommunications services or facilities. For the purposes of this section, the term—

(1) "international telecommunications service" shall have the same meaning as that provided in section 601(1) of the Communications Act of 1934, and

(2) "international telecommunications facilities" means those facilities intended for the provision of international telecommunications.

INTERNATIONAL ECONOMIC COMPETITION

SEC. 303. The Secretary of Commerce is authorized to collect information on the competitiveness of United States suppliers of telecommunications equipment and services, foreign direct investment in the United States telecommunications industry, foreign laws and administrative controls on access of United States persons to foreign markets, the degree of equitable access to foreign markets by United States persons, United States share of global markets, and such other information as the Secretary deems necessary, and shall report any findings to the Congress on a periodic basis.

COMMUNICATIONS SATELLITE ACT OF 1962

SEC. 304. (a) Section 102(d) of the Communications Satellite Act of 1962 is amended to read as follows:

"(d) It is not the intent of Congress by this Act to preclude the use of the communications satellite system for domestic communication services where consistent with the provisions of this Act nor to preclude the creation of addition-

al domestic and international communications satellite systems, if required to meet unique governmental needs or if otherwise required in the national interest or if such other communications satellite systems will otherwise serve the public interest, convenience and necessity.".

(b) Paragraph (8) of subsection (c) of section 201 of the Communications Satellite Act of 1962, as amended (47 U.S.C. 721(c)(8)), is repealed.

(c) Section 301 of the Communications Satellite Act of 1962, as amended (47 U.S.C. 731), is amended by deleting "to the District of Columbia Business Corporation Act" and inserting in lieu thereof "to the laws governing corporations in the jurisdiction within the United States in which it is incorporated".

(d) Section 303(a) of the Communications Satellite Act of 1962, as amended (47 U.S.C. 733(a)), is amended to read as follows:

"(a) The corporation shall have a board of directors who shall be elected annually by the stockholders. All board members shall be citizens of the United States, and one board member shall be elected annually by the board to serve as chairman: *Provided, however,* That effective 1 year after this Act takes effect no directors incumbent shall be eligible to hold office as members of the board unless elected in accordance with this section. The articles of incorporation of the

corporation shall provide for cumulative voting and, in the manner prescribed by the laws governing corporations in the jurisdiction in which the corporation is incorporated, may be amended, altered, changed, or repealed by a vote of the outstanding shares of the voting capital stock of the corporation owned by stockholders who are communications common carriers and by stockholders who are not communications common carriers, voting together, if such vote complies with all other requirements of this chapter and of the articles of incorporation of the corporation with respect to the amendment, alteration, change, or repeal of such articles. The corporation may adopt such bylaws as shall, notwithstanding the provisions of the law of any State or of the District of Columbia, provide for the continued ability of the board to transact business under such circumstances of national emergency as the President of the United States, or the officer designated by him, may determine, after February 18, 1969, would not permit a prompt meeting of a majority of the board to transact business.".

(e) Section 304(a) of the Communications Satellite Act of 1962, as amended (47 U.S.C. 734(a)), is amended by inserting immediately before "without" the following: "with or".

(f) Section 304(e) of the Communications Satellite Act of 1962, as amended (47 U.S.C. 734(e)), is amended to read as follows:

"(e) Any record holder of the stock of the corporation, without regard to the percentage of stock so held, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, the corporation's record of shareholders and to make extracts therefrom.".

(g) Section 305(b) of the Communications Satellite Act of 1962 is amended to read as follows:

"(6) to provide international services directly to the public. *Provided, however,* That the Commission shall have the authority to require that such common carrier services be provided by a fully separate corporate subsidiary of the corporation if the Commission determines such action is required by the public interest, convenience and necessity.".

(h) Section 305(c) of the Communications Satellite Act of 1962, as amended (47 U.S.C. 735(c)), is amended to read as follows:

"(c) To carry out the foregoing purposes, the corporation shall have the usual powers conferred upon a stock corporation by the laws of the jurisdiction in which it is incorporated.".

(i) Section 201(c)(7) of the Communications Satellite Act of 1962 is amended to read:

"(7) grant appropriate authorization for the construction and operation of each satellite terminal station to: the corporation; one or more authorized carriers; the corporation and one or more such carriers jointly; or to persons other than the corporation or authorized carriers, as will best serve the public interest, convenience and necessity;".

(j) Section 103 of the Communications Satellite Act of 1962 (47 U.S.C. 702) is amended—

(1) by striking "and" at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(11) the terms 'authorized user' and 'authorized entity' mean a user or entity, other than an authorized carrier, which has been authorized by the Commission to obtain channels of communications in the communications satellite directly from the corporation.".

(k) Section 201(c) of the Communications Satellite Act of 1962 (47 U.S.C. 721(c)) is amended—

(1) by striking "and" at the end of paragraph (10);

(2) by striking the period at the end of paragraph (11) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(12) authorize users and entities other than authorized carriers to acquire channels of communications in the communications satellite system directly from the corporation whenever the Commission finds such acquisition will serve the public interest.".

EXECUTIVE SUPERVISION OF FOREIGN RELATIONS AND ACTIVITIES

SEC. 305. (a) The President, through the Special Representative for Telecommunications and Information, shall exercise such supervision over, and issue such instructions to, the corporation in connection with its relationships and activities with foreign governments, international entities, and the International Telecommunications Satellite Organization (INTELSAT) as may be necessary to ensure that such relationships and activities are consistent with the national interest and foreign policy of the United States.

(b) The Commission is authorized to issue instructions to the corporation with respect to regulatory matters within the jurisdiction of the Commission. In the event an instruction of the Commission conflicts with an instruction of the President pursuant to subsection (a) of this section, the instructions issued by the President shall prevail.

ASSISTANT SECRETARY OF STATE

SEC. 306. (a) There shall be within the Department of State an "Assistant Secretary of State for Telecommunications Affairs". Such Assistant Secretary of State shall be appointed by the President, with the advice and consent of the Senate, and shall serve at the pleasure of the President and shall have the rank of Ambassador. Such Assistant Secretary shall perform such duties as shall be prescribed by the Secretary of State, including the formulation and implementation of policy regarding foreign economic matters in the area of telecommunications, and advising the Secretary of State with respect thereto.

(b) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following:

"Assistant Secretary of State for Telecommunications Affairs.".

REDESIGNATION OF TITLE VI OF THE COMMUNICATIONS ACT OF 1934 AND NATIONAL DEFENSE AND EMERGENCY PREPAREDNESS

SEC. 307. The provisions of title VI of the Communications Act of 1934 as such title existed on the date immediately preceding the date of the enactment of this Act are hereby redesignated as title VII and sections 601 through 606 thereof are redesignated as sections 701 through 706, respectively, sections 607, 608, and 609 thereof are redesignated

as sections 708, 709, and 710, respectively, and the following new section is inserted after the newly designated section 706:

"NATIONAL DEFENSE AND EMERGENCY PREPAREDNESS

"SEC. 707. (a) The President may establish a plan to ensure the availability of telecommunications services, facilities, and equipment necessary to meet the national defense and emergency preparedness needs of the United States and to ensure the continuity and prompt initiation or restoration of the communications essential to national defense or emergency preparedness.

"(b) Pursuant to any plan established under subsection (a), the President may request carriers to engage in meetings for the purpose of assuring the establishment and maintenance of networks of telecommunications services and facilities adequate to maintain the national defense and emergency preparedness of the United States: *Provided*, That this subsection shall not exempt any carrier from the provisions of the antitrust laws for any action taken by such carrier which is a violation of such laws when taken by a single carrier.

"(c) The President shall appoint an advisory council of not to exceed 30 members to examine the structure, policy, and needs of Federal telecommunications management for national security and emergency preparedness to ensure that the United States shall have a technologically advanced and

economically viable telecommunications industry for the purposes of the national defense and economic advancement.".

Senator GOLDWATER. I hated to take up your time, Mr. Fowler, but you go ahead and say anything you want, within reason.

STATEMENT OF HON. MARK S. FOWLER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. FOWLER. Well, thank you, Mr. Chairman.

The first thing I want to say is I totally agree with your comments. I think it is very possible that indeed by the end of this century we will see the telecommunications sector of our economy as the most important one from an international trade standpoint as well as from the standpoint of harmonizing the globe.

I was thinking while you were talking, what is America? America is Africans and Europeans and Asians and Latin Americans bonded together by a common language and, hopefully, a rapid and efficient telecommunications system. And that is what, it seems to me, has made America great.

Now, if we can take your idea of promoting an efficient global telecommunications system, and it seems what we have done for America, we can do for the world, or help others in connection with ourselves do for the world, by bringing together the whole world as we have done in America. Because we are a melting pot as well, we can make sure that all the great ideas that people have anywhere in the world are heeded and known by others. An exchange of ideas is important, it seems to me, not only from the standpoint of enhancing individual freedoms but also economic well-being.

And I think that it is very possible that you will, within your lifetime, see that come about.

Now, as to the planetary communication, I cannot give you such a warranty, but I think we can move rapidly in terms of expanding global telecommunications. In fact, I think from my soundings so far, and some trips abroad—including one to the OECD in Paris—it is going to happen much faster than any of us now can even foresee. And I am confident that, by the end of this century, telecommunications will be the most important trade component in our economy.

Senator GOLDWATER. I might say that last night I held a communication with a young Russian by Morse code. We are not supposed to do that, but not many people know the Morse code. Thank you.

Mr. FOWLER. I guess I did not hear that.

Thank you, Mr. Chairman, for this opportunity to testify on behalf of the Commission on S. 999, the International Telecommunications Act of 1983. We at the Federal Communications Commission consider Congress effort to revise and update our governing statutes to be a high priority. Our desire is to assist the Congress in this important endeavor.

With me today I have Kalmann Schaefer of my office, who is Assistant for International Communications; and Will Demory, Assistant Chief of the Common Carrier Bureau, specializing in international telecommunications matters.

We share the view of the Congress that international communications is of growing importance to the economic and foreign policy of our Nation and to the interests of its citizens. We are impressed

that S. 999 recognizes the significance and the peculiar nature of the international communications market.

We are pleased that S. 999 incorporates the philosophy of international competition but recognizes the differences between the international and domestic markets and gives the Commission specific tools and the general flexibility that it needs to persuade the oversea entities to accept our policy initiatives.

Today I would like to address two major premises of S. 999: One, the need for the Government to pay more attention to the development of U.S. international telecommunications and information policy; and two, the need to address the communications aspects of national security and emergency preparedness.

During my FCC tenure, I have become troubled that the U.S. Government does not pay sufficient attention to international telecommunications policy. We thus find the provisions of S. 999 calling for greater governmental attention to telecommunications policy development laudable. We believe the existence of a high-level, central voice for administration policy on international telecommunications will be helpful. I thus endorse the proposal in S. 999 to create the Office of Special Representative for Telecommunications and Information in the Executive Office of the President.

I am encouraged that the bill provides the Special Representative and his or her deputy with only a small staff. I have expressed in the past a concern that increased central policy coordination can create delay. My conviction is that you cannot solve the problems of a bureaucracy by simply creating more bureaucracy.

I read S. 999 as not transferring to any other agency or coordinator existing policymaking powers of the FCC. I note that proposed section 206 transfers powers from other agencies to the Special Representative. However, because I do not represent those agencies, I am not in a position to comment on that provision. It appears that transferred powers go beyond coordination into the realm of policymaking. Given the significance of the question, the details of the transfer should be spelled out in the legislative history. This legislative history should particularly address whether the limited staff of the Office of Special Representative, which I view as an attractive feature of S. 999, would be expected to carry out policymaking in all the areas potentially encompassed by the scheme proposed by S. 999.

I also note that the bill exempts the Commission's regulatory actions from review by the Special Representative or the task force over which he or she is to preside. Nonetheless, we are concerned that review required of other agencies could unreasonably delay needed action. The bill would be significantly improved if it specified a timetable for action. The Special Representative could also help in the prevention of delay, could help expedite and focus the work of the task force.

Finally, with respect to the provision in S. 999 for a private sector advisory committee to assist the task force, I am pleased that it provides for soliciting the views of those most affected by telecommunications policy in a systematic way. Again, however, the advisory committee must be well run to avoid delay.

The second major aspect of S. 999 I would like to address today is its provisions addressing national security and emergency prepar-

edness [NSEP] communications. The provisions in sections 603 and 707 of S. 999 bearing upon NSEP are generally good. However, there are certain ambiguities in the provisions of S. 999 from my perspective, and as I understand it, from the perspective of the Department of Defense.

While section 707(a) authorizes the President to establish an NSEP plan, the bill as drafted does not otherwise indicate how such a plan might be implemented consistent with the framework of the Communications Act.

I believe that the clear intent of S. 999 is to retain the regulatory plan of the act otherwise unchanged, and that implementation would proceed no differently than in the past. That is, where tariffs are required, they will be filed with the Commission, and where facilities requiring authorization under title 2 or 3 of the act are involved, this authorization will be sought.

To avoid potential confusion, my staff has been working with the Department of Defense to clear up the ambiguities. They have developed a working draft revision of section 707 which would clarify that implementation of an NSEP program may proceed on two alternative bases. First, the President might seek voluntary compliance by the private sector, generally through the use of appropriate contractual or payment arrangements. Second, the President might seek through normal Commission processes that the Commission order implementation by the carriers.

I believe these changes will permit a workable, competitive NSEP program which will also be fully consistent with the regulatory plan of the Communications Act.

One area of potential controversy of which the committee should be aware relates to a proposed grant of limited Commission authority over otherwise unregulated enhanced services. Sophisticated users of communications, including the Department of Defense, are relying increasingly on enhanced services for communications-like requirements. The new working draft would grant the President authority to seek voluntary participation in an NSEP plan by providers of enhanced services, and it would also grant the Commission authority to adopt regulations providing for priorities in the initiation or restoration of enhanced services.

To close, I endorse strongly the policy thrust and the focus on high-level coordination embodied in S. 999. As I have already indicated in previous testimony before this and other committees of Congress, we at the Commission are firm in our belief that a policy of competition will extend to the international market the same benefits that this policy has already extended to domestic users.

We are thus committed to it. We have taken a number of actions seeking to increase competition in the international market and to give market participants greater flexibility to deal with technological and operational changes. At the same time, we know that there are considerable differences between the international and domestic markets which, if they do not mandate philosophically different goals, at least require careful and thoughtful implementation.

International telecommunications policy warrants the measured attention that S. 999 contributes to these issues.

That is the end of my statement, Mr. Chairman.

Senator GOLDWATER. Well, thank you very much, Mr. Fowler. I have just a few questions.

The FCC has stated in somewhat cursory fashion that its Computer II rules apply to the provision of international services. Does the Commission plan to give more information on this issue, and if so, when?

Mr. FOWLER. We have several proceedings that are now pending, Mr. Chairman, regarding application of the Computer II internationally. We have on two occasions now made a policy determination where we stated that Computer II does apply internationally.

However, there are many issues, more properly put, subissues, which would arise from that general policy determination, and we have several proceedings pending right now which have some of the edges of these issues involved. So I cannot give you any particular date, because there are many different proceedings.

But we will dispose of them as rapidly as we can. It is our judgment that some misinformation has been disseminated in international forums concerning how Computer II applies and what the Commission's view is. I think some of that information has been disseminated on a studied and calculated basis and does not serve our interest. I think we have been successful in eliminating the confusion that was caused by that with foreign administrations.

I am confident now they understand what we have done—and indeed what we have not done—and I think our general view of this whole area is, yes, we think that a competitive marketplace is the way to go. We point to the benefits to consumers in the United States when we talk with other administrations, but we do not suggest that that is the way they should do it. They will have to make that determination. We hope, and indeed are confident, that ultimately they will, in part or in whole, adopt some of these policies themselves as they see that this is working, we think pretty well, in the United States.

So, we will be sensitive to their concerns. They may not always agree with us, but at the same time we will continue to advance as vigorously as we can consistent with reasoned diplomacy and good will our policies promoting competition. So we have a goal firmly fixed in mind, and we will advance as quickly as we can toward that goal in the international area.

Senator GOLDWATER. During hearings on S. 2469 last year, you testified that the interagency group was working well, and that no additional coordinating mechanism was needed in the executive branch. Your testimony today is clear that you believe additional coordination in international policy is needed. What in your experience in this one year has changed your mind?

Mr. FOWLER. Mr. Chairman, when I testified before, one of the things I very strongly supported was executive branch coordination, and this arose out of experience over that year where there was some confusion, where the Commission received conflicting signals from different departments in the executive branch, and as a result of that experience I felt it was necessary to have effective executive coordination.

However, what has changed over the past year which leads me now to support a very high-level approach to coordination in the executive branch has been that, more than ever, telecommunica-

tions has become important to our country, not only from a foreign policy standpoint—and the questions and the statements you made, the very eloquent statement that you made earlier, which is that it can bring mankind together, has some important foreign policy edges and implications. It has some important defense implications. But, increasingly, it has an important trade implication.

It is the third largest export now: Telecommunications, internationally, rates behind aerospace and agriculture, right now. It is growing faster than either of the other two. So, I think just the trade matter alone over the past year has led me to believe that not only do we need that executive branch coordination that I testified about a year ago, we need now more than ever to have it established at a very high level.

And I cannot think of a better place to put that than in the White House, where it belongs, so that when you have those turf battles, when you have disputes over jurisdictions, when you have issues that overlap different jurisdictions, you have got someone who is able to say, OK, this is our position, this is what we are going to do, this is what the President has decided.

Senator GOLDWATER. I got the reference several times to executive branch coordination. Do you find that readily available?

Mr. FOWLER. Right now?

Senator GOLDWATER. Yes.

Mr. FOWLER. Well, there have been some efforts to coordinate the executive branch, and I think they have been very helpful, but I do not think they are the whole answer. I do not know of any locus within the White House when there are disputes, where those disputes can be resolved. Now, there may be some informal apparatus that I am not aware of, but what I can testify to is that I have seen over the past couple of years issues that have not been decided in my judgment so that we had a coherent, homogeneous executive branch position.

As an example, if we have a proceeding before the agency, we might have several executive departments all saying different things on the same issue. It makes it very difficult, for example, for our agency to know what the position of the executive branch is, what efforts were made to harmonize that position, and indeed, what is the proper position of the executive branch as a generic entity.

So, I guess my answer is that there have been some efforts in some of the departments to coordinate, but to my knowledge there has been no establishment in the White House itself of a coordinating mechanism, and inevitably that is where your thoughts lead you. That is the most logical place to put it. To put it in any one executive branch agency does not make any sense.

If you put it in one cabinet department, inevitably you are still going to have a great deal of friction—because the others may not accept the idea that that department should have the lead in international telecommunications—but no one would question the President's authority in the White House to make those decisions.

So, what I like particularly about this bill is, one, it does that, and two, it does it in a way that does not establish yet another bureaucracy. The bill seems to envision a very small staff, I would imagine, four or five people all together, and that is really all you

need. But you need someone there to speak for the President, to bring heads together to work out conflicting positions, and to make those final decisions so that we have a final, coordinated executive branch position, truly.

Senator GOLDWATER. That is what I was trying to get at. Is there any one person in the White House now that you can go to, just one person, and get any kind of an answer toward the resolution of a communications problem?

Mr. FOWLER. It would depend on the issue, but I cannot say in all cases I can go to one person for the generic category "telecommunications issues and/or problems" and be able to obtain a definitive position. No, sir.

Senator GOLDWATER. I thought that was true, because I have been trying to think of somebody myself. I think this is extremely important. I am thinking, for example, of the White House desire, as you are well aware, to set up a series of meetings on what do they do in the event of an emergency. To me, when there is that kind of emergency, the President is the Commander in Chief, and he just pulls the switch.

That is the way it has happened in other emergencies I have been through, and it has always worked out, but if we sit down now, No. 1, and the White House has nobody to even think about these things, and then, No. 2, have to deal with a great mass of people interested in communications in this country, I can see a very prolonged period of meetings of where we really do not come up with an answer.

I cite this as just one example and a very important example of why this kind of office being located close to the President would tend to give him the assurances that I do not think he has of what do I do if war comes, or an international emergency comes tonight, or if a neutron device explodes 200 miles over the center of America?

So, I think this becomes a very, very important part of not just the White House's life, but the life of every American.

The NTIA study on long-range goals in international telecommunications recognized that the FCC has in light of the apparent failure of the executive branch to develop and implement policy, gone beyond its traditional regulatory role and considered issues of foreign affairs, national security, and the United States trade policy. The GAO agrees with this view, as well.

Have executive branch agencies been helpful, and do you see your policymaking role as the executive branch becomes more active in this area?

Mr. FOWLER. I think the executive branch has been helpful in this, since we have had the comments, for example, of the Departments of Defense, State, Commerce, the Special Trade Representative, and others, depending on the proceeding. Formal comments have been filed or there have been informal conferences, and those have all been helpful. Where we run into problems, when you ask whether it is helpful or not is where we have, as I alluded to earlier, a situation where we have conflicting positions advanced by different executive departments. That is when it becomes very confusing for the agency.

I feel comfortable with our role in the past where we have considered foreign policy and defense implications in making our decisions. I would submit, had we not done so, we would not be serving the public interest. If we had simply ignored these things and said, no, these are not matters where we should be engaged, I think we would have had a decision that was less than in the national interest. So, I would not agree with that part of the NTIA study that found us to be running somewhat far afield.

I do not think we were, and I cannot think of a single instance, nor can anybody point to one, where we did not receive and fully consider the input at the executive branch on matters relating to foreign policy, defense, and commerce. So, I think we have got a good record there.

Senator GOLDWATER. Under the Government reorganization section of our bill, it is clear that the FCC is required to coordinate some of its activities in international telecommunications policymaking with executive branch agencies. It is the only independent regulatory agency with an obligation to do this. Do you see this function as inconsistent with the FCC's independence? And then, how can we make sure that the independence is not sacrificed, or does it really matter when we talk about international telecommunications policymaking?

Mr. FOWLER. Senator, I do not think it does in any way jeopardize the Commission's independence, because I know that, for example, where S. 999 requires us to coordinate with the other entities which comprise the task force, we are already required to coordinate with those entities. However, areas where there might be a problem with our independent status, S. 999 exempts us from the coordination requirement. That is, our rulemaking proceedings and adjudicatory matters are not subject to coordination.

So, I feel very comfortable in being able to say that the Commission will still be able to carry out its traditional independent statutory obligations, and I therefore think that it will not impede our efforts as we view them in the international area. I do not see that as a minus at all. Indeed, I see it as a distinct plus—that is, the task force.

Senator GOLDWATER. Well, then, in view of our experiences in past international conferences, I do not think any of us could say that they have been overwhelmingly successful on the part of the United States, or in view of the fact that we now have about 150 odd countries participating, where I think the first conference I remember was under Herbert Hoover, Jr., had around 40 or 41, and we are still dealing with around 1 billion frequencies, and of course everybody wants the best one, and that prompts this kind of a question.

What happens if in a future telecommunications conference the conference takes a position exactly contrary to the U.S. interests? Do you see the possibility of that happening, particularly on issues that become politicized. And it is hard to believe that they will not become politicized. There are those who say the only option the United States has under those circumstances is to work within the ITU. Do you agree with that?

Mr. FOWLER. I do not think that is the only option. No, sir, I do not agree with that. I think that there may be circumstances in a

particular conference, particularly when it is a politicized conference where the United States must decide if it can continue to participate. All conferences to some extent are political. However, when they become unduly political in nature, or where political references are injected into an otherwise nonpolitical conference, I think there are circumstances where the U.S. interests are obligated no longer to participate in that conference, to eliminate its participation and walk out. I think those would be few and far between.

And, fortunately, I would hope that we would be able to avoid that kind of a decision. However, because it may not always be possible, it certainly must always be an option. At the same time, I would say that if we do walk out, we also lose an option to be able to influence other matters that occur during that conference or as followup matters. So I think you have to very judiciously weigh the advisability of such a course when you make that decision as to the overall option of alternatives to the ITU.

I think that that is something that this country must be thinking about—that is to say that if ITU becomes considerably more politicized, I think we ought to be exploring alternatives to the ITU. Indeed I think there are some efforts underway right now to do exactly that. Now, that is not to say that we ought to be advancing this as a means of threatening the ITU at this time. I do not think that is what we ought to be focusing on.

I think we ought honestly to be thinking what alternative apparatus we can construct that would serve the same functions as the ITU and do it better. We need to be planning and getting about doing that task right now, thinking about it, producing contingency plans, so that in the event we conclude at some point that that international organization or some other is no longer a useful and constructive international forum, that we have an alternative to go to.

Senator GOLDWATER. Of course, that alternative becomes a very difficult position to reach, because I think more than ever before in our memory or in our history the politics that enter in and will enter into more and more this type of conference will be weighted against the United States, just as we see today the overwhelming number of countries in the United Nations who vote against the United States if for no other reason than we are the United States. Yet it has been a fact that when we get into frequency conferences where we do most of the work involved, we find ourselves with very few friends. While frequency control may not seem important, it would become very important if we expect to make anything meaningful or worthwhile out of international communications.

If we wind up with everybody on the same frequencies, we would have the same kind of mayhem and bedlam that we would have in this country if we suddenly, for example, opened up everything from 147 to 175 megahertz for business communications as well as nonbusiness, amateur, police, fire, and so forth.

I do not have any other questions, Mr. Fowler. I want to thank you for being here, and I really do believe that this is one of the most important functions your organization and our committee and the Congress can work toward, and I think our first step has to be

the education of the White House in the general field of communications, not that the White House is unusual.

I do not think the average American nor the American businessman has any conception of what we are talking about when we get into the trouble and work of providing, for example, more mobile telephones, more work-to-work telephones and communications. This is a very complex field that is growing more and more complex day by day by day.

So, thank you very much for being here.

Mr. FOWLER. Thank you very much, Mr. Chairman, indeed.

[The statement follows:]

STATEMENT OF HON. MARK. S. FOWLER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Good morning. Thank you for this opportunity to testify on behalf of the Commission on S. 999, the International Telecommunications Act of 1983. We at the Federal Communications Commission consider Congress' effort to revise and update our governing statutes to be a high priority. Our desire is to assist the Congress in this important endeavor.

I would like to emphasize that we share the view of the Congress that international communications is of growing importance to the economic and foreign policy of our nation and to the interests of its citizens. We are impressed that S. 999 recognize the significance and the peculiar nature of the international communications market.

As I have indicated in previous testimony before this and other Committees of Congress, we at the Commission are firm in our belief that a policy of competition will extend to the international market the same benefits that this policy has already extended to domestic users. We are thus committed to it. We have taken a number of actions seeking to increase competition in the international market and to give market participants greater flexibility to deal with technological and operational change. At the same time, we know that there are considerable differences between the international and domestic markets which, if they do not mandate philosophically different policies, at least require careful and thoughtful implementation.

For this reason, we are particularly pleased that S. 999 is a bill which incorporates the philosophy of international competition, recognizes the difference between the international and domestic markets—and gives the Commission specific tools and general flexibility that it needs to persuade the overseas entities to accept our policy initiatives.

As the members of this Committee are well aware, international communications are a joint undertaking between sovereign nations. All parties must agree to the ground rules under which these communications are offered. In the past foreign administrations adopted a centralized approach to the provision of communications services. Many have provided for government ownership of the telecommunications entity, or PTT. Thus, many of our overseas communications partners do not share U.S. views about the appropriate structure of the communications markets, although their recent study of competition policy and experimentation with competitive entry demsonstrate a growing awareness that tightly controlled market structue may not be optimal—anywhere—in the present techological era.

Historically, our overseas correspondents have dealt with multiple U.S. suppliers only with a certain reluctance. Through the requirements of granting operating agreements, the PTTs could control the number of U.S. carriers who can provide service to any given country and under what terms.

Pro-competitive international policy and deregulatory legislation has encountered problems in addressing this problem. Past drafts of pro-competitive international legislation have sometimes been overly ambitious. They would have abolished or significantly reduced much of the U.S. regulatory authority over international telecommunications providers. That approach, while consonant with our long-term policy, has denied U.S. Government representatives both the authority to try to persuade foreign governments about the benefits of our policies and the tools needed to protect our carriers against discriminatory actions by the PTTs or their governments.

It is in this context that S. 999 strikes the proper balance. The bill preserves the pro-competitive philosophies of earlier bills, and greatly simplifies their administration. The bill also preserves the regulatory tools we need to deal with our overseas

counterparts. While negotiation of particular operating arrangements remains the appropriate province of the carriers, we are pleased to see that S. 999 specifically recognizes the necessity for the Commission and other U.S. governmental agencies to meet with the overseas administrations to explain our policies and to show how those policies will benefit all parties.

As the Committee is aware, the Commission in recent years has taken a number of pro-competitive actions in the international market. For example, we have acted to remove the policy bar which divided the international market into separate voice and record components.

Last year we also acted to remove the policy bar which had prevented Comsat from providing satellite circuits and satellite-based services directly to the public. Existing carriers have appealed that decision. I am pleased that S. 999 includes provisions which would ratify this Commission's policy decision, although the Commission holds the view that it had sufficient authority to act under the existing provisions of the Satellite Act.

Will Demory, the Assistant Chief (International), of the Common Carrier Bureau, will comment on specific provisions of S. 999 in more detail tomorrow. Additionally, we would welcome the opportunity to discuss minor language questions with your staff. Today, however, I would like to address two other major premises of S. 999, the need for the United States government to pay higher-level, coordinated attention to the development of international telecommunications and information policy and to address communications problems associated with national security and emergency preparedness.

During my FCC tenure I have become troubled that the United States government is not paying sufficiently high-level attention to international telecommunications policy. International telecommunications have become increasingly vital to U.S. economic and security interests. Already telecommunications and information services make substantial contributions to U.S. international trade, both in themselves and as the backbone of trade in manufactured goods. This trend can only grow more pronounced in the future. Yet, many overseas governments are protectionist and seek to stem the free flow of telecommunications trade and information in the international market.

We at the Commission have been concerned about these developments and have taken actions to open world markets and to protect the equitable access of U.S. communications and information-service providers. We have strongly supported the effort to direct higher-level governmental attention to these matters. In this connection, I am pleased to see that the National Telecommunications and Information Administration, in its recent report on Long Range Goals in International Telecommunications and Information, agrees that there is a need for strong U.S. information policies and for greater coordination efforts. I am also highly gratified to see that NTIA approves of the Commission's recent policy initiatives, and appears to support our intent to undertake a comprehensive inquiry into regulatory issues raised by the development of the integrated services digital network.

S. 999's coordination provisions are laudable for their balanced view of the relationship between the FCC, an independent policymaking body, and the Executive Branch agencies. The fact that we are an independent regulatory agency does not in any way negate our ability to work with the administration, or our commitment to the administration's communications goals. In this connection, I might note that our recent efforts in analyzing the carriers' ISDN efforts were fully coordinated with NTIA, the Department of Commerce and the Department of State. The fact that we have a mandate from Congress to guarantee a strong, efficient communications network for the United States is consistent both with administration policy and our ability to contribute to U.S. communications policy development.

Because it would be helpful to have a high level, central voice for administration policy on international telecommunications, I endorse the creation of the Office of Special Representative for Telecommunications and Information in the Executive Office of the President. The Office of the Special Representative will serve as a single focal point for international telecommunications policy implementation. It should go a long way toward solving the coordination concerns of NTIA. We thus find it a positive development.

In my testimony before this Subcommittee on March 8 during consideration of the FCC Authorization Act of 1983, I urged continued close attention to preparing for international negotiations and to exploring structural or other improvements to this important process. At that time I proposed that consideration be given to establishing an on-going entity to coordinate overall U.S. preparations and policies regarding international telecommunications issues. An entity such as the Office of the Special Representative will serve this function.

I am encouraged that the bill provides the Special Representative and his or her deputy with only a small staff. One of the concerns I have expressed in the past with increased policy coordination is the possibility for delay these efforts entail. My conviction is that you cannot solve the problems of a bureaucracy by creating more bureaucracy. The drafters of S. 999 are to be commended because they have worked to avoid this quagmire.

I expressly read S. 999 as not transferring to any other agency or coordinator existing powers of the FCC. Because I am not representing the effected agencies, I am not in a position to comment at length on proposed Section 206 that transfers powers of other agencies, but I would add here one caveat. Section 206 transfers to the Office of Special Representative certain functions that prior Executive Orders have vested in other agencies. They would appear to be more than policy coordination functions, reaching into the realm of policy making. It is somewhat unclear to me how extensive this transfer would be, but, given its potential significance, this must be spelled out in legislative history before I can comment favorably or negatively on the Section 206 proposed transfer. This legislative history should address whether the limited staff of the Office of Special Representative, which I view as an attractive feature of S. 999, would be expected to carry out policy making in all the areas potentially encompassed by the Executive Orders referred to, or of a narrower scope.

The bill also provides that all policy statements and proposed actions which will have an impact on U.S. international telecommunications and information policy must be reviewed by the Task Force. An international communications coordinating body is necessary.

While the bill exempts the Commission's regulatory actions from Task Force review, we are still concerned that this process could unreasonably delay needed action. We have all expressed dismay about the difficulty of taking timely, concerted government action in this area—we should be sure we do not create a solution which exacerbates the problem. S. 999 does not give any timetable for the Task Force review or specify how often the Task Force will meet. The bill would be significantly improved if such a timetable were added.

I also see the creation of the Office of Special Representative as a positive step in dealing with this timeliness concern. As I read S. 999, the main function of the Special Representative is to preside over the International Telecommunications and Information Task Force. Since the members of the Task Force would all be busy people with other duties, the existence of a single individual whose sole responsibility is policy coordination should help expedite and focus the work of the Task Force.

With respect to the provision in S. 999 for a private-sector Advisory Committee to assist the Task Force, I am pleased that the importance of weighing the views of those most affected by telecommunications policy in a systematic way has been recognized. Again, the Advisory Committee, unless well run, could crate the delay problems referred to in connection with the Task Force; for this reason a timetable for its recommendations should be added. I would also note that the Federal Advisory Committee Act of 1978 already provides for establishment of advisory committees, without any need for Congressional authorization. The Commission has set up advisory committees under that statute that have performed very well.

S. 999 also contains provisions addressing national security and emergency preparedness, or "NSEP," communications. I believe that with the broad structural and competitive changes which are underway in the industry, it is appropriate at this point to clarify provisions in the 1934 Act to reflect our changed markets and government policies, and for that reason I applaud the Committee's efforts to do so in the bill.

The provisions in Sections 603 and 707 of S. 999 bearing upon NSEP are generally good. They underscore the status of NSEP as an important part of the Commission's overall statutory mandate; they ensure that the Commission will consider, as part of its determinations to revise, reduce or eliminate rules and regulations, potentially significant adverse effects on NSEP; and they emphasize the desirability of the President's creating NSEP communications plans with maximum reliance upon the private sector. These are laudable goals.

However, there are certain ambiguities in the provisions of S. 999 from my perspective and, as I understand it, from the perspective of the Department of Defense. While Section 707(a) authorizes the President to establish an NSEP plan, the bill as drafted does not otherwise indicate how such a plan might be implemented consistent with the framework of the Communications Act. I believe that the clear intent of S. 999 is to retain the regulatory plan of the Act otherwise unchanged, and that implementation would proceed no differently than in the past. That is, where tariffs are required, they will be filed with the Commission, and where facilities requiring

authorization under Title II or III of the Act are involved, this authorization will be sought. But, to avoid potential confusion in the industry, it would be desirable to clarify this. My staff has been working with the Department of Defense to do so.

Our staffs have developed a working draft revision of Section 707 which would clarify that implementation of an NSEP program may proceed on two alternative bases. First, the President might seek voluntary compliance by the private sector, generally through the use of appropriate contractual or payment arrangements. Second, the President might seek, through normal Commission processes, that the Commission order implementation by carriers. Under either approach, implementation would occur consistent with the Commission's authority under the Act, including its ratemaking authority and its facilities authorization authority. Furthermore, the new language would carefully accommodate competitive concerns which might bear upon the NSEP program planning and implementation process. I believe that with these changes, a workable NSEP program will evolve which is consistent with the increasingly competitive telecommunications industry in this Nation, and which will be consistent with the regulatory plan of the Act.

One area of potential controversy of which the Committee should be aware relates to a proposed grant of limited Commission authority over otherwise unregulated enhanced services. As the Committee is aware, in view of the confluence of data processing and communications technology, sophisticated users of communications such as the Department of Defense are relying increasingly on enhanced services for communications-like requirements. The new working draft would grant the President authority to seek voluntary participation in an NSEP plan by providers of enhanced services, and it also would grant the Commission authority to adopt regulations providing for priorities in the initiation or restoration of enhanced services.

To close, I endorse strongly the policy thrust and the focus on high-level coordination embodied in S. 999. International telecommunications policy warrants the measured attention that S. 999 contributes.

Senator GOLDWATER. We will now ask Hon. Donald Latham, Deputy Under Secretary of Defense for Communications, Command, Control, and Intelligence, to take the chair.

Mr. Latham, you may proceed in any way you want. We will put your whole statement in the record.

STATEMENT OF DONALD C. LATHAM, DEPUTY UNDER SECRETARY OF DEFENSE FOR COMMUNICATIONS, COMMAND, CONTROL, AND INTELLIGENCE, DEPARTMENT OF DEFENSE

Mr. LATHAM. All right, sir. Thank you. I appreciate that. And thank you very much for allowing the Department of Defense to share some views with you today, sir, on S. 999, the International Telecommunications Act.

I am appearing today actually with dual responsibilities. I am the Secretary of Defense's principal staff assistant for command, control, communications, and intelligence, and also his principal staff assistant in his role as the Executive Agent for the National Communications System, which is a very major responsibility that we share across the entire Government.

We find that international telecommunications are extremely important to the Department of Defense, and this particular act is extremely important to us for a number of reasons. First of all, the Department of Defense is currently, within the United States, the largest user of international telecommunications. Our annual bill for international service this year will be about $54 million, and we are currently leasing about 518 private lines.

Second, we are in fact in the international telecommunications business to the extent that we own and operate the defense-wide defense communications systems, which include the defense communications satellite system.

Yes, sir.

Senator GOLDWATER. I just want to ask you a question. Has the breakup of AT&T, which formerly provided you with what I would call foolproof international communications, has that had any effect on your ability to maintain instant communications with all bases?

Mr. LATHAM. Not yet, sir, because it has not yet occurred. We we are very concerned about the divestiture, and we are taking a number of steps to make sure that that divestiture and what happens after that will not in fact impact on our ability to have good communications, especially here in the United States, where we are very dependent on the commercial telephone system. Over 90 percent of our command and control traffic actually goes over commercial lines here in the United States today, therefore divestiture is a serious concern, and as you know, we have taken a number of steps to try to make sure there is adequate provision in legislation for planning and restoration for national security, and in fact this bill touches on that, and I will comment on that further in just a minute.

I might mention, as I was saying, in the defense communications satellite system we have worldwide global connectivity. In addition to that, we have Government-owned telecommunications facilities in a number of foreign countries that we own and operate today, especially in the NATO countries.

Third, as you know, sir, we enter into a number of base rights agreements and memorandums of understanding. We have status of forces agreements that the Department of State negotiates for us with a large number of countries for telecommunications purposes.

We also have a number of foreign leases today with foreign PTT's, which again, because they are foreign PTT's, would not come under the Telecommunications Act in the United States or the Communications Satellite Act of 1962.

We have a very keen interest in maintaining and making sure that we can maintain a diversity of communications media. For example, we would like to maintain some of our communications in Government on defense communications type systems. We would like to keep some on cable, and some on commercial satellites, so that we have the survivability acheived by diverse routes and this an ability to have our communications more survivable. We are continually addressing the issue of communications survivability for both commercial and military systems in some detail.

And we hope that this diversity and availability of these commercial systems would be at a cost and a quality that we could continue to afford.

The last area is quite significant to our interests here. As you know, during the Carter administration, they published Presidential Directive No. 53, which dealt with surviving, enduring telecommunications for national defense and national security needs. This directive is currently being rewritten in the White House. This has significance for the Department of State, for the International Communications Agency, as well as for the Department of Defense, in that PD–53 will become a new NSDD [National Security Decision Directive], which will address the issue of both commercial as well as military communications survivability and endurance for national emergencies.

I would like to comment specifically on the national security provisions as they are mentioned in S. 999. We believe that there has to be recognition in the legislation persuasive in the statements of findings, purposes, and policy that the promotion of national defense and security and emergency preparedness is a goal at least equal to any other.

That is first and foremost. Second, we believe there is a need for legislative safeguards authorizing and requiring all telecommunications carriers to engage in joint planning for developing plans for restoration of communications, for interoperability, for setting standards, and things of that nature, so that they can do this planning in advance.

And then, thirdly, that there has to be permission for any telecommunications carrier or separate affiliate of that carrier to act free from unwarranted restrictions in providing telecommunications facilities, service, or customer premise equipment during times of national emergency.

We believe that S. 999 is a step in the right direction, but it does fall short. We believe the bill needs to be strengthened in a number of ways in support of national security. And we have, as Mr. Fowler mentioned, been working some amendments to it that we would like to submit to you in a couple of weeks that would help strengthen that area.

Senator GOLDWATER. We would appreciate having those as soon as possible.

Mr. LATHAM. Yes, sir. On resale and share use, as we testified on S. 2469 last year. We support S. 999 in this area, and would support the point that in that area with foreign entities to set up resale and shared use is the way to go.

On the area of authorized user and Earth station ownership, the proposal in S. 999 in sections 304 (g), (j), and (k) would authorize the FCC to permit users and entities other than carriers to deal directly with Comsat. It would also require Comsat to establish a fully separate subsidiary for common carrier purposes, and it would permit entities other than Comsat to construct and operate earth terminals which can access Intelsat.

We support these initiatives, but we do not believe that the bill goes quite far enough in this regard. We would like to see the U.S. Government declared an authorized user of the services and facilities of Comsat, and then the U.S. Government would have unrestricted ability to deal directly with Comsat unless the FCC finds it not in the public interest. As you know, there has been an issue of long standing between the Department of Defense and the FCC regarding access to Comsat directly.

I would like to comment on the executive branch organization provisions of S. 999. As you were just commenting, and Mr. Fowler commented, previously there is a proposal to set up a high-level office in the executive branch with the rank of ambassador for telecommunications and information policy. We have some concern about this, primarily as it regards the task force and the advisory group that would be supporting this office. As you know, sir, on a day-to-day basis we are creating and terminating leases with foreign entities, sometimes in periods as short as a week.

We deal directly day-to-day on a number of issues with a number of foreign PTT's, and what we are concerned about is the task force and its role and the advisory group and its role in dealing with these kinds of issues. In some cases, they could be called quasi-policy issues, and as Mr. Fowler mentioned, we would not want to have something set up that would slow down decisions and authorize entry into our day-to-day operations.

It is really more that concern than anything else. We have supported in the past, as you know, a small office in the White House that could focus policy and could focus issues for conferences and things of that nature, but we see this task force and the advisory group as currently written up as not as clear as we would like to see it, and we would like some clarification.

I might mention in regard to your earlier concern we do have a focal point in the White House for national security communications issues. We go to the National Security Council. PD-53 is being rewritten jointly by ourselves and the NSC staff. We have excellent rapport there, and there is considerable attention and concern given to the whole telecommunications area as it regards the Department of Defense.

So if on a given night the President did have to pull the switch, as you say, we have procedures and systems in place and so on for making sure that we have adequate connectivity between the office of the Presidency as the Commander in Chief, as well as his other two hats that he wears as President.

So I am not as concerned there about that, sir, as it might seem.

Senator GOLDWATER. That is sort of built in for you.

Mr. LATHAM. Yes, sir.

Senator GOLDWATER. But it is not built in for the public.

Mr. LATHAM. Well, that is right, and I guess in setting up any small office in the White House, it would be very important to clarify where its authority starts and stops and where the National Security Council's authority starts and stops with regard to this telecommunications area, because right now we have one place to go to, and it might end up that we would have two places to go to in the White House on some issues, and we would need to get that clarified.

Senator GOLDWATER. Well, I do not think—I hope that never needs clarification. My position is that the Commander in Chief, in time of emergency——

Mr. LATHAM. He is the man.

Senator GOLDWATER [continuing]. Has all the authority he needs to stop television broadcasting, amateur use——

Mr. LATHAM. Yes, sir.

Senator GOLDWATER [continuing]. Business communication. He has always done it, and we have had no trouble.

Mr. LATHAM. Yes, sir.

Senator GOLDWATER. Today he will have trouble just because people like to make trouble.

Mr. LATHAM. Yes, sir.

Senator GOLDWATER. But if I were the President, I would tell them to go to hell.

Mr. LATHAM. Well, in summary, sir, I would like to say that we think that legislation that updates the laws governing our interna-

tional telecommunications is essential, and this bill is certainly a good step in that direction. We think that the provisions in the bill, S. 999, relative to national security and emergency preparedness are not as strong as we would like to see them, and we would like to offer some suggestions in that regard. And we believe that these revisions should be done by legislation in the Congress and by the executive branch and not done in the courts.

Specifically, in section 707, we believe that the shortfalls need to be corrected, and as I say, we will submit some words in that direction. And tomorrow, Lieutenant General Hillsman, who is the Director of the Defense Communications Agency and also acts as the Manager of the National Communications System for the Secretary, will be here to testify, and he will fill in some more specifics on that point, sir.

Thank you very much.

Senator GOLDWATER. Well, thank you very much for your testimony, Mr. Latham. I have no questions. The questions that we would normally have for you, I think that we can have them answered tomorrow.

Mr. LATHAM. All right, sir.

Senator GOLDWATER. As I say, yours is not the general area that I am particularly worried about. It is the advent, since the last really big national emergency, the advent of more and more communications systems that the public has become used to, and will find difficult to be without.

Mr. LATHAM. Yes, sir.

Senator GOLDWATER. Thank you.

Mr. LATHAM. We are taking a number of steps, as you know, as part of the President's strategic modernization plan, to significantly improve our communications posture and our command and control capability so that that will have an impact, I think, for example, spinoff technology into the commercial sector, things like that.

Senator GOLDWATER. Thank you very much.

Mr. LATHAM. Yes, sir.

Senator GOLDWATER. And be sure you get your suggested amendments over here as soon as you can.

Mr. LATHAM. Yes, sir, we would be glad to do that.

Senator GOLDWATER. Thank you.

Mr. LATHAM. Thank you.

[The statement follows:]

STATEMENT OF DONALD C. LATHAM, DEPUTY UNDER SECRETARY OF DEFENSE FOR COMMUNICATIONS, COMMAND, CONTROL, AND INTELLIGENCE

Mr. Chairman and Members of the Subcommittee: I want to thank you for providing the Department of Defense an opportunity, both today and tomorrow, to address the vital importance of domestic and international telecommunications to national security and emergency preparedness, and to express our views on S. 999, the "International Telecommunications Act of 1983" and the "International Telecommunications and Information Coordination Act of 1983." Your efforts to develop specific international telecommunications regulatory reform initiatives, evidenced by S. 999, are of substantial significance to all users of international telecommunications and information services. The Communication Subcommittee and its expert staff are to be congratulated for recognizing that technological advance, increased international trade in telecommunications and information services and equipment, and the vital importance of international telecommunications to our national security and emer-

gency preparedness require modernization of the laws which govern international telecommunications.

When LTG Hilsman testified on behalf of the Defense Department before you last June regarding S. 2469, the predecessor of S. 999, he noted his dual responsibilities as Director of the Defense Communications Agency and Manager of the National Communications System (NCS). Today, I also appear before you with dual responsibilities. I am both the principal staff assistant to the Secretary of Defense for Department of Defense telecommunications, command and control, and intelligence resources, and the principal staff assistant in carrying out the Secretary's responsibilities as Executive Agent for the NCS. Thus, I will also address S. 999, and its direct relationship to national security and emergency preparedness communications, from both the DoD and NCS perspectives. I will outline for you the Defense Department's views regarding international telecommunications in general, and LTG Hilsman will address in detail the specific revisions the Department believes should be made in S. 999, primarily in the Title III, Section 307 provisions regarding national defense and emergency preparedness.

IMPORTANCE OF INTERNATIONAL TELECOMMUNICATIONS

Many factors make the international telecommunications industry, and thus the laws governing that industry, vital to the DoD. First, the DoD is the largest single U.S. user of leased international telecommunications services, currently incurring annual charges of more than $54 million for 518 private line channels alone.

Second, to provide a portion of our international telecommunications, the Defense Department employs various military satellite systems, such as the Defense Satellite Communications System (DSCS). We also operate substantial quantities of US government-owned terrestrial communications equipment in numerous countries throughout the world.

Third, we have many "base rights" agreements with several countries regarding our telecommunications operational activities within those countries. These range from memorandums of understanding to more extensive international agreements (e.g., Status of Forces Agreements) and these arrangements are normally negotiated under the auspices of, or through the Department of State. We also have arrangements whereby we provide point-to-point or mobile telecommunications services to government entities of other countries (e.g., Canada, United Kingdom, Federal Republic of Germany) or to multilateral international organizations (e.g., NATO).

Fourth, the Defense Department leases significant amounts of telecommunications services directly from foreign communications entities, which services and entities are not subject to the Communications Act of 1934 or the Communications Satellite Act of 1962 (e.g., communications between U.S. installations wholly within a foreign country, or between installations in separate foreign countries).

Fifth, while as a large user of international communications services we obviously want to obtain the highest quality service at the lowest possible rates as quickly as we can, we also have another critical requirement, that of ensuring communications secure from interruption accidental or deliberate action, i.e., survivability. This requirement for survivability motivates us to distribute our communications among the commercial cable, commercial statellite, and government-owned satellite media so that failure of any one medium (or part thereof) will allow continuation of most of our communications capability. This need for a "mix of media" is the reason for our long-standing strong interest in maintaining the quality and viability of both international cable and satellite systems, and the health of the firms which provide those services. It also leads to our view that it is imperative that both cable and satellite transmission media remain readily available at reasonable rates, and that the Congress and the Federal Communications Commission should continuously exercise care that nothing be done which makes either cable or satellite transmission so expensive or so undesirable that either becomes uneconomical or unavailable.

Finally, international telcommunications are critical to the implementation of Presidential Directive-53, National Security Telecommunications Policy, for which the NCS has primary responsibility. PD–53 enumerates national security telecommunications objectives and principles and emphasizes those communications necessary to support the strategic forces, conventional forces, intelligence and diplomatic activities, continuity of government, emergency preparedness, and reconstitution of the Nation following enemy attack. From my perspective, not only is DoD's extensive leased and government-owned international telecommunications capability critical to the fulfillment of PD–53, but the substantial international telecommunications assets of other agencies such as the Department of State and the International Communications Agency are also vitally important to national security.

With the foregoing understanding of the importance of effective international telecommunications to the national security and emergency preparedness missions of the Department of Defense and the National Communications System, and an awareness of the various, and somewhat unique, aspects of our international telecommunications operations, I would now like to briefly address the aspects of S. 999 which we believe to be most important.

SPECIFIC NATIONAL SECURITY/EMERGENCY PREPAREDNESS PROVISIONS

In the previous DoD testimony regarding S. 898 and H.R. 5158, the comprehensive domestic telecommunications legislation, and S. 2469, your international legislation in the last Congress, the DoD repeatedly enumerated the broad areas in which we believe legislation is necessary to ensure our Nation's telecommunications industry fully satisfies national security (including national defense) and emergency preparedness requirements. In so doing, the DoD made no distinctions between the domestic and international portions of our telecommunications industry, and indicated our firm belief that any domestic or international telecommunications legislation must contain provisions providing for:

Prevasive recognition in the statements of findings, purposes or policy that the promotion of national defense and security and emergency preparedness is a goal at least equal to any other.

Legislative safeguards authorizing and requiring all telecommunications carriers to engage in joint planning through developing plans and procedures for the protection and restoration of essential telecommunications, and by preparing for the interconnection and interoperation of facilities and services when necessary to meet national defense and security and emergency preparedness needs.

Permission for any telecommunications carrier, or separated affiliate/subsidiary, to act free from unwarranted restrictions in providing telecommunications facilities, services, or customer-premises equipment during times of emergency, under whatever industry structure exists.

We continue to believe that legislation remains necessary to address the first two items, and measured against such standards S. 999 satisfies the first but fails to provide for the second. Indeed, as LTG Hilsman will explain on DoD's behalf tomorrow, in the area of joint carrier planning to meet national security and emergency preparedness needs, S. 999 is a major step backward from both S. 898 and S. 2469.

RESALE AND SHARED USE

S. 999 contains a provision [new Section 602(c) of the 1934 Act] which provides that it shall be United States policy to promote "the deregulation of the resale or shared use of any international telecommunications service." That provision recognizes that such a policy should be promoted "through meetings with foreign telecommunications entities", and an adjacent subsection [new Section 602(b)] recognizes that international telecommunications services are joint U.S.-foreign undertakings and that the interests of sovereign foreign nations must be considered in the implementation of U.S. policy.

I believe the approach of S. 999 in this area is consistent with DoD's S. 2469 testimony last year, which suggested that discussions in international forums, rather than ad hoc regulatory or legislative action, were the proper manner to address issues related to the resale and shared use of international telecommunications. Accordingly, the Department supports S. 999 in this area.

AUTHORIZED USER AND EARTH STATION OWNERSHIP RESTRICTIONS

S. 999 (Section 304(g), (j), (k)] amends the Communications Satellite Act of 1962 to specifically authorize the FCC to permit users and entities other than carriers to deal directly with the Communications Satellite Corporation (Comsat) whenever the Commission finds it will serve the public interest. The amendments would also permit the FCC to require Comsat to establish a fully separate subsidiary to provide common carrier services. Furthermore, S. 999 would clarify the intent of the 1962 Satellite Act to permit entities other than Comsat to construct and operate earth stations accessing the Intelsat system.

We support these efforts to clarify the Commission's legal authority to permit entities other that the international service carriers to deal directly with Comsat or to own and operate Intelsat earth stations. We do not believe, however, as will be fully explained by LTG Hilsman tomorrow, that these amendments to the Satellite Act go far enough to ensure that the U.S. Government is an authorized user of the services and facilities of Comsat. We at DoD submit that S. 999 should specifically reaf-

firm that the U.S. Government is unrestricted in its ability to deal directly with Comsat, subject, of course, to the Commission's authority to review such direct dealings under the "public interest, convenience and necessity" and "just and reasonable" standards of Title II and III of the 1934 Communications Act as amended.

EXECUTIVE BRANCH ORGANIZATION

Title II of S. 999 establishes in the Executive branch an Office of the Special Representative (and Deputy) for Telecommunications and Information. This Office is to be the principal coordinator for international telecommunications and information policymaking. Title II of S. 999 also establishes a task force to be the principal coordinating body for the development of United States telecommunications and information policies. The Secretary of Defense is made a member of the task force. The task force is charged, inter alia, with assisting the Special Representative in coordinating the policies of all federal agencies involving international telecommunications and information, and with reviewing all significant policy determinations or proposed statements of U.S. policy by such agencies.

The Department of Defense generally supports the goals which prompted the introduction of Title II. In the past, U.S. international telecommunications and information policymaking has not always been conducted effectively, and U.S. representation in various international conferences has not always been adequate. I remain concerned, however, that as presently written the reorganization contemplated by S. 999 could result in unintended intrusion of the Special Representative, or the task force, into our myriad day-to-day international communications operations. As was explained in DoD's testimony on S. 2469, in leasing or operating the Department's international telecommunications services and facilities, many of the Department's international telecommunications activities are governed by provisions of Status of Forces Agreements. The Department of Defense is also a major user of the telecommunications frequency spectrum throughout the world (using approximately 106,000 frequency allocations internationally) and is heavily involved in the Allied Radio Frequency Agency of the North Atlantic Treaty Organization. Furthermore, the Department of Defense's lease of commercial international telecommunications requires extensive dealings with foreign communications entities, and it is common for the Department to order, pay for, use, and terminate international telecommunications services within relatively short time periods (e.g., 7-30 days).

These Department of Defense activities require almost daily consultation and negotiation, contractual or otherwise, with foreign entities. We must also frequently negotiate various arrangements with foreign countries to obtain efficient and economical international communications. Moreover, many of these Department of Defense activities are of a "policy" nature, such as our current attempts to seek host nation approvals for the location of satellite earth stations accessing Intelsat upon military installations overseas. As currently written, however, the provisions of Title II could prohibit many of these day to day activities of the Department of Defense unless prior approval of the Special Representative or the task force was obtained. Furthermore, the task force might also be required to "consult" with the section 208 advisory committee prior to approving any "new statement" of U.S. policy.

It is thus the Defense Department's belief that the Special Representative and the task force created by Title II should not be effectively authorized to make, review, or approve the many planning, programmatic and operational decisions affecting our telecommunications systems and operations. That would inject yet more levels of organizational review, involving several officials who have no expert knowledge of the effects of their decisions upon the basic operational missions and requirements that the Department of Defense's telecommunications activities must support, into the development and daily operation of mission essential telecommunications services.

Moreover, efforts are ongoing within the Executive Branch to better coordinate international telecommunications and information policy. A Coordinator-International Communications and Information Policy, with the rank of Ambassador, has been appointed in the Department of State. This has led to renewed efforts to utilize the Senior Interagency Group on International Communications and Information Policy, which State chairs, to coordinate U.S. international communications policy activities. I believe these improvements are in large part due to your efforts, but under these circumstances I believe enactment of the provisions of Title II of S. 999 is not necessary at this time.

CONCLUSION

The Department of Defense firmly believes that legislation updating the laws governing our international telecommunications industry is essential, and that S. 999 contains several positive steps in the right direction. We at DoD also believe, however, that the provisions of S. 999 which address national security and emergency preparedness needs are seriously inadequate and would not serve our Nation's need for effective commercial communications to contribute to our deterrence posture. As the largest single U.S. user of both domestic and international telecommunications, we believe extensive revision of those provisions of S. 999 is imperative to adequately provide for national security and emergency preparedness communications needs. Nevertheless, we also believe that Congress and the Executive Branch, and not the FCC or the Courts, should establish the goals of and guidelines for both domestic and international telecommunications policy in the 1980's and beyond. Accordingly, we encourage the Subcommittee to move forward with legislation based on S. 999, revised as I have suggested and as will be further explained by LTG Hilsman tomorrow. My staff is also available at your convenience to discuss these matters in depth.

Thank you for listening.

Senator GOLDWATER. Now we have Mr. Michael Gardner, of Akin, Gump, Strauss, Hauer & Feld.

Mr. Gardner, you may take a seat.

STATEMENT OF MICHAEL R. GARDNER, ATTORNEY

Mr. GARDNER. Good morning, Senator.

If you would like, I can go through my statement quickly and then take any questions you might have.

Senator GOLDWATER. Fine.

Mr. GARDNER. Senator, I am testifying today on S. 999 based on my recent experience as the head of delegation with ambassador rank at the International Telecommunications Union's Plenipotentiary Conference held last fall in Nairobi. By the way, I am one of those ambassadors you alluded to in your opening comments. I was not named 15 minutes before but a few weeks before. I did not enjoy ambassador rank during my bilateral discussions.

The ITU conference in Nairobi was supposed to have been an important, technically focused communications conference. Its importance stemmed from the fact that the 158 participating nations of this specialized U.N. body had the ability by a simple majority vote to alter the ITU Convention, a convention which governs the worldwide use of the electromagnetic spectrum and the geostationary orbit, the essential highways for communications of all kinds.

Instead of providing an important and productive technical forum, the Nairobi Conference degenerated into a contentious political forum where radical members dominated 4 of the conference's 6 weeks with an illegal effort to exclude Israel from participation in this U.N. body. After our Government and others staged a major global effort to halt this radical effort, the United States prevailed by a slim four-vote margin in protecting Israel's right to participate in the ITU. Our success on the vote also protected, at least for the time being, the important principle of universality, the cornerstone of the U.N. system.

It is important that this committee realize the implications if this vote had failed to muster the four votes to keep Israel within the ITU. Had Israel been thrown out of the ITU, we too would have left the ITU, and with our departure, the ITU's value to the United States as a means of providing a harmonious framework for

international telecommunications would have ended. We would have been forced immediately to find an alternative to the ITU.

Even with our success on the Israeli vote, the ITU's future value and stability was called into question by a number of politically motivated votes that needlessly pitted the developed world against developing nations. And as we have seen throughout the entire U.N. system, the one vote per nation procedure gives the G77 countries unquestioned voting dominance, even if it is within a traditionally technically oriented body like the ITU.

In short, our experience in Nairobi confirmed beyond any doubt that a very serious, negative trend exists even within this international telecommunications body which, if not altered, could in the near term adversely impact the United States.

With this sober assessment in mind, I am encouraged to have the opportunity to testify on S. 999 as this legislation contains numerous important provisions designed to elevate the focus on telecommunications in the executive branch, and by so doing, to insure that future U.S. interests in international telecommunications are not just protected but enhanced.

Specifically, I applaud title II's provision that a senior level person be designated full time responsibility at the White House to serve as an independent broker for the more aggressive development of our communications policy. As the record shows, the United States typically has approached the international telecommunications policy forums with an uncreative, defensive strategy, hoping to maintain the status quo. In reality, the only way to even maintain a desired status quo, if that is all we really want, is to be imaginative and aggressively on the offensive. I think this senior-level White House function will clearly facilitate this much needed change in our policy goals and strategy. Moreover, it will insure the fullest participation of both the National Security Council and the Domestic Council in the development of our international telecommunications policy.

Creation of this function at the White House should only serve to augment the effectiveness of the new office of Coordinator at the State Department, a new step at the State Department which I applaud heartily.

Another important provision of S. 999 is its mandate that the Interagency Task Force of Cabinet Officers involved in telecommunications seriously consider alternatives to the ITU. If the ITU should dysfunction, as it nearly did at the Nairobi Conference, the United States must be prepared to function without interruption in our important use of the GSO and the electromagnetic spectrum. It is not just our national dependence on the luxuries of the communications age that are involved. It is also national security considerations that come into play if the ITU becomes an unacceptable means of coordinating international shared use of these vital resources.

So while the United States must try to assert more effective leadership within the ITU, which I think we are trying to do now, we should not fail to seriously consider compatible alternatives to the ITU. This legislation insures that this important activity will take place within 3 years of enactment.

S. 999 is also important in that it mandates significant private sector involvement in the development of a new and hopefully more aggressive international telecommunications policy. The 30-member private sector council may seem large and unwieldy to critics, but if properly directed, it can insure the degree of industry input which will help protect our position in international policy forums, and importantly, give us increased appropriate leverage in the telecommunications marketplaces of the world.

Industry in this country must have a greater role in our policy formulation if we are to effectively compete with our aggressive trading partners who in almost every case rely effectively on a partnership between their governments and their telecommunications industries.

Under the Reagan administration, the private sector has been afforded an increased opportunity to be involved in telecommunications policy development. For example, I had as full time members on my delegation in Nairobi several telecommunications leaders from such important corporations as AT&T, Comsat, IBM, and the IRC's.

Additionally, and very importantly, industry leaders responded with enthusiasm to my request that the private sector establish the U.S. Telecommunications Training Institute, an initiative that we were able to announce in Nairobi and one which will provide free, corporate-sponsored training to 300 people from developing countries in 1983 alone. Creation of this institute confirms that our telecommunications industry is prepared to help Government do what is needed to improve our interests in the international telecommunications arena.

S. 999 is important in that it recognizes the need for more industry input in this process and provides a certain mechanism to insure that Government and industry will move closer to the type of collaborative effort that is proving so successful to other key players in the global telecommunications marketplace.

In conclusion, it is encouraging that this committee, through S. 999, is addressing the serious challenges and exciting possibilities of international telecommunications. The bill's provisions that I have discussed would unquestionably provide the much-needed means to develop a more effective and aggressive policy of entrepreneurial diplomacy in regard to international telecommunications.

Based on our very substantial resources in this field and the unparalleled genius of American entrepreneurs since the days of Thomas Edison and Alexander Bell, we should be the leading developed country in telecommunications. If our Government moves away from merely a status quo policy in international telecommunications, the results will be more than an improved balance of trade or a more secure national defense system. We will also be able to better help developing countries of the world establish their own domestic communications infrastructures, infrastructures that will provide Third World countries the means to better educate, feed, and medically care for their own.

Just as importantly, these domestic infrastructures, when plugged into Intelsat and international cables, provide a pipeline for the free flow of information. And this information, with the

truth that it carries, is the best means to ultimately make developing countries participants and sharers with us in the telecommunications explosion of the 1980's.

When we more creatively and aggressively use our vast resources in telecommunications, we all benefit. In several important ways, Senator, S. 999 provides a means to do just that.

Senator GOLDWATER. Thank you very much, Mr. Gardner.

Many people express the view that U.S. preparation for international conferences and U.S. Government policymaking coordination simply lacks adequate resources, that with a greater commitment of funds, our problems would be solved.

Do you agree with that?

Mr. GARDNER. Well, I think there are several problems, Senator. From my experience at the State Department, in preparations particularly before Under Secretary Schneider was aboard, I had no full time staff assigned at all, and the only time I had resources that were adequate was when I went to Nairobi. I did fortunately have friends scattered throughout the Government like Chairman Fowler and Assistant Secretary Wunder who made people available to me on a loan basis. But they had other responsibilities. So I was sharing people.

When I really got on top of the substantive matters and injected, I think, some creativity into our planning was when Comsat and AT&T and several of the corporations made people available to me almost on a full time basis. So with the part time help I was getting from some Government departments and with this industry input, I think we were able on the very last days before we went to Nairobi to get a more aggressive approach.

In reality, I see two problems. We lack proper senior level focus on telecommunications, and that means coordination, and not just coordination; it means visionary planning, aggressive, sound planning. And we also need, certainly in the State Department, in my opinion, Ambassador Dougan needs more talented people working for her in that department, and probably throughout Government, telecommunications has not been given the priority it should.

So I think it is a combination of things. I do not think just indiscriminately funding someone's authorization is going to cure it. I think we have to focus on the means to change the whole approach.

Senator GOLDWATER. Well, it has only been recently that we have had anybody assigned in the State Department to coordinate or even look into this work. It has been, as you know, a shortcoming of the State Department in that, in my opinion, they never saw much importance attached to the rather technical sounding business of frequencies. Now we have a person over there.

Is she working better with you?

Mr. GARDNER. Yes, I think—well, you know, Senator, my responsibilities basically ended when I turned in the delegation report. I practice law here in Washington, but I have dealt with Ambassador Dougan, and as I say, Under Secretary Schneider, although he came in in September when I was just about to go to Nairobi. Both, particularly Under Secretary Schneider was extremely helpful on a few key votes.

For example, on this Israeli vote, we totally mis- or underestimated what was going on initially. We thought that that fight to throw Israel out of the U.N. system would be in New York, and it turned out that those who were trying to do it in New York realized they had a better opportunity in Nairobi. And throwing Israel out would have been extremely disruptive, not just from Israel's viewpoint, but that the whole principle of universality was at stake—the principle that a soverign state that has a right or country that has a right to be a member. And in that case, Under Secretary Schneider made himself totally available to me and was very helpful.

But once you get below that level and below Ambassador Dougan's level, you really do not have the resources committed to telecommunications that in my opinion are needed. Moreover, it just cannot be State that is looking over this vast opportunity. It has got to be Commerce and Defense and others, even Charlie Wick's agency, the USIA, has a real opportunity to help us.

We have to get all these resources in government going in the same direction and working with the private sector intimately to maximize the opportunities we have. And they are enormous. And our trading partners realize it and are going after markets much more aggressively than I think we are.

Senator GOLDWATER. I see Ms. Dougan in the audience, and while you did not come here to testify, I might ask you, do you feel that you are beginning to get the message through to those old people over there in the State Department?

Ambassador DOUGAN. Yes. I would be happy to chat with you about it on an appropriate occasion.

Senator GOLDWATER. How many people do you have on your staff?

Ambassador DOUGAN. At the moment?

Senator GOLDWATER. Yes.

Ambassador DOUGAN. Six.

Senator GOLDWATER. Well, that is about it.

Thank you very much.

Mr. Gardner, I have got the impression that most people would agree that better U.S. coordination could make the ITU work for us.

Do you agree with that?

Mr. GARDNER. Well, Senator, my experience is limited to the Nairobi Conference, but I did study its history, and I think all one has to do is look at the trends within the U.N. system to see what is a precursor in terms of the ITU.

Nonetheless, I think that through industry and Government resources we must make every attempt to improve our leadership within the ITU, and, you know, we clearly have an awful lot to bring to the equation. At the same time, I really find unacceptable the suggestion of people in this town who have dealt with the ITU for decades who say, oh, we must not look elsewhere. It might be viewed as an insult to the ITU.

I think we have to develop an alternative to the ITU, a policy-making body that if the ITU dysfunctions, we can immediately go on, as I say in my testimony, without interruption in our use of these important resources.

And I would suggest to you, based on my experience in Nairobi, that it is not just the developed countries that would participate in this forum. I think if we are aggressive we could bring many informed developing countries into a body such as this. Just like the G77 countries meet and formulate policy before they go to these conferences, we must have a policy vehicle so that we set an agenda; and let's say we do not get everything. At least we are setting the agenda in advance, we are selling it, we are showing to these developing countries where it is in their best interest not to go with political rhetoric, but to go down a course that is rational and sane in terms of the use of these resources.

And we do not have this approach or vehicle that now, and I think when you look at the four-vote margin in Nairobi, two of those votes were ours in the sense that we cast a vote for Haiti and we cast our own vote. Had we not been in that position, we would have had to leave that conference and not participate in the ITU until they let Israel back in. And once Israel was out, she would never be back in that body, I can assure you.

So we would have been at that point, forced to do something different. And I am suggesting, and I am delighted to see in this legislation that the authors are proposing that we take on that serious chore now rather than wait until we are disrupted.

Senator GOLDWATER. Well, from what you say, I have to comment that there are those who say the only option the United States has under circumstances that you have been discussing that we know about is to work within the ITU.

You do not necessarily agree with that.

Mr. GARDNER. Absolutely not, and moreover, I think any time a country with our leverage and resources says we have no options, it is very regrettable. I would be suspect of that person's point of view, regardless of the subject.

We are mighty in this area, and we are not bullies, we are mighty. We have a lot to contribute. We can help developing countries.

But I think the head of the United Kingdom delegation, in the heat of this Israeli vote, best summed it up when he went on Kenyan TV and he said the United States is not the ITU, but the ITU cannot exist without the United States. And I would suggest to you that in terms of ever having to form another body, we will have plenty of good company. I hope it does not come to that, but I think we have to face the reality of the situation we are in.

Senator GOLDWATER. Well, Mr. Gardner, you do not know what a refreshing thing it is to hear you speak like that.

Mr. GARDNER. Senator, I do not work for the Government, so I have no turf considerations. So I can be frank—I really do think that many of my cohorts in Government from State, Commerce, FCC, as you heard Mark Fowler, they really have begun to appreciate how important it is that we get our act together in this area. And I think it is time to put turf considerations behind us and look for the least costly means in terms of regulatory cost or governmental cost vehicle to achieve these goals.

And that is why I keep saying we have got to forge a bigger partnership with industry.

Senator GOLDWATER. I am all for you. I just wish you could get that same attitude across to people who form our foreign policy. I have been awake day and night on this Central American issue, and about all we need down there is the same attitude we needed in Korea, Vietnam, Afghanistan, you name it, is the attitude you are expressing: either they go along with us or we are going to give them a bad time. We are big enough to do it.

Mr. GARDNER. We also have a lot of largesse, too. I mean, in the developing world, even this institute I talk about, we are going to train 300 people who would not get the kind of training. It is all from the corporations, no Federal cost. That is the way we build bridges to these people so they do not vote against us in these important forums. And I think in telecommunications, the developing countries are really beginning to appreciate how important it is to them.

Senator GOLDWATER. I am going to give you a question you can spend your time thinking about and submit it for the record.

Mr. GARDNER. OK.

Senator GOLDWATER. We will just hand it to you because it will keep you here a long time.

Mr. GARDNER. Fine.

Senator GOLDWATER. Mr. Gardner, some people allege that no further coordination beyond the senior level interagency committee need take place.

To your knowledge, is this group sufficient to handle the U.S. international policymaking functions?

Mr. GARDNER. Well, I have only been involved with that group on several occasions. I do not work with them on a regular basis. It is a very large group, and it is definitely interagency. It represents important parts of the government. I think that while that body may serve an important function, we need something as contemplated in the act that brings together the top people.

You have to be able to make them focus and plan. They maybe do not have to meet as frequently, for example, as the SIG group does, but I think that this is—the elevation of this issue within the Government is essential if we are going to maximize our opportunities.

Senator GOLDWATER. If you had had this bill with a properly functioning Special Representative, would this have improved your lot prior to the last Nairobi Conference?

Mr. GARDNER. Senator, unquestionably, our preparations—and I say it as head of delegation, and any lack of preparations will fall on my shoulders—our preparations were inadequate. You cannot prepare for a conference that has the potential impact on us that that did, where the convention can be rewritten from A to Z, starting 5 months out.

Now, there was an interagency body before I was named that met for almost a year, but their product, which was a good product, were 70 odd plus papers, none of this represented a coherent policy. And as I said in my testimony, it was mostly intended to maintain a status quo. We have to do something different than just aiming to maintain a status quo. And to do that, you have to have ongoing, full time, senior level people watching the shop and being visionary about their mandate.

So I would say to you as head of delegation, while I am very proud of our delegation and I think we got out of Nairobi not nearly as hurt as we could have, that the preparations were very inadequate, and had we been doing it differently, I think we could really start to reverse this trend in the international arena. We have to take the leadership.

Senator GOLDWATER. Well, I want to thank you very much for taking your time to be with us, and thank you for the obvious thought that you have given to this. Naturally I am prejudiced in this field, but all my long life in communications, I have always felt we are heading to the day when we are going to come out with the short end of the stick unless we go better prepared to these international conferences.

In fact, I remember Herbert Hoover, Jr., told me once, never allow our country to go to another conference because we go in on the short side and we come out on the shorter side.

So let's see if we can stop that.

Mr. GARDNER. Thank you, Senator.

Senator GOLDWATER. Thank you very much.

[The following information was subsequently received for the record:]

Question. What are some of the specific steps the U.S. can take to increase both our preparation for and effectiveness at international conferences?

Answer. I am enclosing as a comprehensive answer to the question recommendations that I made to the Secretary of State in my final Delegation Report dated April 15, 1983.

CONCLUSION AND RECOMMENDATIONS

The Nairobi Conference was a highly charged political forum where the traditional technical focus of this specialized U.N. agency for telecommunications was deliberately subverted by radical elements within the ITU.

These forces, by virtue of their leadership within the G77 Bloc, collectively have a voting majority within the one-vote per country ITU framework. In Nairobi, this voting advantage provided radical forces the leverage to promote such illicit political goals as the exclusion of a sovereign member, Israel, and the inclusion of Namibia, not yet qualified under ITU rules for membership in the ITU.

The voting advantage vestd in the G77 Bloc also allowed this coalition, led by Algeria, to undermine the fundamental mission of the ITU. Specifically, addition of language in Article 4 expanding the ITU's mandate to include direct provision of technical assistance from the regular budget of the ITU represents a significant and deplorable departure from the traditional focus of the ITU to coordinate technical and operational aspects of telecommunications and to regulate the use of the radio frequency spectrum including the use of the GSO.

In view of the fact that the ITU Plenipotentiary Conference in Nairobi was the sovereign organ which set the schedule for future ITU Conferences—fifteen of which will take place to deal with discrete and important telecommunications issues between now and 1989—the potential ramifications from undesirable developments are particularly troublesome.

In recognition of the important negative developments of the Nairobi Conference, the U.S. Delegation issued a general reservation that reflects these concerns. The reservation is as follows:

The United States of America, deeply troubled by developments at the 1982 ITU Plenipotentiary Conference reserves the right to make appropriate specific reservations and statements prior to ratification of the ITU Convention. The general concern of the United States is based on the Union's regrettable and pervasive lack of realistic fiscal planning, the politicization of the Union, and a requirement that the Union provide technical cooperation and assistance which should be appropriately provided through the United Nations Development Programs and the private sector. This reservation is necessarily general in nature due to the Conference's inability to complete its substantive work by the time required for submission of Reservation.

By this reservation, United States serves notice of its right to modify to any degree its future participation in the ITU.

Regardless of what actions the United States may take based on the United States reservation taken in Nairobi, there remains a greater concern that the United States must address; namely, that based on developments and trends evidenced at the Nairobi Conference, it is clear beyond a doubt that the U.S. may not confidently rely upon the ITU to act in future conferences in a manner which is consistent with important interests of the U.S. In view of the fact that our membership in the ITU was preserved by a mere four vote margin attendant to the Israeli exclusion vote, it is a conservative prediction when looking at the agenda of the fifteen pending ITU Conferences in this decade, that other politically motivated proposals are likely to be initiated, and if adopted by the G77 majority, would be so inimical to U.S. interests as to render continued U.S. membership in the ITU impossible. This real threat, therefore, raises serious questions about the future development of international telecommunications policy should the United States ignore the warning signals of Nairobi and leave this important function exclusively within the purview of the ITU.

The future effectiveness of the ITU hopefully can be impacted by the approach that the United States and its "telecommunication allies" determine to take within the ITU during the next six years. For example, it is clear that U.S. planning for the Nairobi Conference was inadequate, lacking maximum creativity and imagination. More importantly, full-time serious preparation for Nairobi was compressed into an inordinately brief five-month time frame commencing with the selection of the Head of Delegation. Even when named, the Head of Delegation did not have access to confidential planning documents for almost six weeks of the precious five months remaining for planning for the Nairobi Conference. Moreover, during the full-time substantive planning process, support staff for the Head of Delegation was virtually nonexistent.

Probably the most serious flaw in planning for this important Plenipotentiary was the absence until the last two months of direct industry involvement in the inter-agency planning group that late became the U.S. Delegation. Without genuine industry involvement, planning often lacked creativity and insight into the ITU and the global telecommunications marketplace. Once the private sector delegates were indentified and interposed into the planning process, and new and ofter bolder affirmative approach was developed resulting in the Scope Paper which guided the Delegation in Nairobi. While this partnership between industry and government finally was achieved and reflected admirably in the activities of the U.S. Delegation throughout the Nairobi Conference, it is nonetheless clear that the Delegation had too little industry input too late to measurably impact the U.S. agenda for the Nairobi Conference.

While some laudable initiatives were undertaken by the U.S. Delegation in Nairobi, we were nontheless largely in the same defensive posture that generally has typified U.S. participation in past ITU Conferences. Consequently, the U.S. once again was reacting to the well orchestrated and unacceptable negative agenda of others, mostly redicals within the ITU, rather than asserting an agenda which could be acceptable to most developed countries and many within the G77 Bloc. As prior Conferences including Nairobi confirm, it is impossible to provide effective, affirmative leadership within the ITU unless the United States establishes its own agenda well in advance of the Conference. Once established, we then must engage in "entrepreneurial deplomacy" before each Conference where we, the government and private sector, effectively explain our goals to others and convince leaders from both developed and developing countries to work with us to effecutate these mutually agreeable goals.

Accordingly, the following are a series of recommendations which are submitted with regard to both future U.S. participation in ITU Conferences as well steps that the U.S. simultaneously can take to develop a compatible alternative to the ITU.

RECOMMENDATIONS REGARDING FUTURE U.S. PARTICIPATION IN ITU CONFERENCES

1. The Head of Delegation should be designated at least one year before the commencement of each ITU conference and given adequate full-time professional staff to begin preparation at that time. The professional staff should be inter-agency in nature and should be informed in substantive aspects of issues that will be adressed by the conference.

2. The U.S. delegation should be announced at least six months prior to the conference. The delegation should include a cross section of government officials from all involved agencies as well as members of the affected private sector. This mandat-

ed mix of professional talents will insure that there is an adequate inter-agency as well as government-industry interaction.

3. In addition to a balanced group of technical and substantive delegates, the delegation make-up should include: representation of both the user and consumer community; an experienced press relations member; several delegates who are bilingual with capabilities in at least Spanish, French and Russian; and an individual highly conversant in the procedural guidelines of the ITU Convention. Creative utilization of procedural devices are essential to our effective participation in future ITU conferences.

4. The FCC comment period should close at least several months before the commencement of the conference so that industry participation on the delegation is not inhibited by potential conflict of interest concerns.

5. The delegation should be required to present a full set of U.S. policy goals at least four months before the conference convenes. Support for these policy goals should be established through extensive bi-laterals conducted well in advance of the conference's opening.

6. A "home team" which will not attend the conference should be established at least two months prior to the delegation's departure for the conference and should work closely with the delegation from that point until the conference concludes. The "home team," like the delegation itself should be interagency in nature and include industry representatives. Government representatives on the "home team should be senior level to insure that the "home team is an adequate vehicle for prompt and efficient decisionmaking. All cable traffic between the delegation and Washington should be reviewed promptly by the "home team" so that instructions are modified in an informed and expeditious fashion. Additionally, the U.S. delegation should utilize conference calls when feasible to communicate with the "home team" when matters are of importance dictate.

RECOMMENDATION FOR FUTURE U.S. FINANCIAL SUPPPORT OF THE ITU

Regarding future U.S. payment to the ITU, the U.S. has until July 1, 1983, to make its commitment to a fixed payment, be it units or less. (As noted above, the U.S. currently contributes 30 units and the Nairobi Conference raised the maximum number of units a country may contribute from 30 to 40.) In view of the fact that it will be difficult to determine inadvance of that time what payments will be made by other parties, the U.S. should reduce its commitment to 20 units to insure that it does not exceed the total net payment made by the U.S. in the past. Once all information is in as to the voluntary payment level of other countries, the U.S. could increase its payment with ease; however, under ITU rules, it is not possible to reduce a level of contribution once a commitment is made.

A larger consideration is at stake in regard to the decision about the level of U.S. payment. Specifically, the U.S. Delegation to the Nairobi Conference was instructed to adamantly support a zero growth budget. Again and again, the U.S. Delegation followed instructions which necessarily caused the United States to be critical of the ITU management and to insist upon internal reforms. These actions now would seem somehow less than credible if the U.S. voluntarily agreed to a payment schedule to the ITU that was in excess of the zero growth budget which we previously insisted upon. If the U.S. is to be effective in asserting a necessarily hard line fiscal position like the position taken at the Nairobi Conference, the our follow up actions must be consistent.

This recommendation does not suggest, however, that we withdraw our very substantial financial as well as in-kind support of the ITU. Quite to the contrary, now is the time for the U.S. to become even more involved in the operations of the ITU and hopefully secure, through that involvement, an increased leadership role within this international organization. Through this leadership role, improvements and advancements can possible take place that will forestall future undesirable disruptions in the traditional working of the ITU.

This recommended increased U.S. involvement in the ITU does not contradict the recommendation which follows that the U.S. establish an alternative policy development vehicle which could co-exist with the ITU and still provide an altenative to the ITU should its value be compromised by the actions of radical forces within the Union.

RECOMMENDATION FOR A NEW INTERNATIONAL TELECOMMUNICATIONS POLICY PLANNING BODY

In addition to the recommendations articulated above which address improving the performance of U.S. delegations at future ITU conferences, the United States in

1983 should develop an international policy planning body that could protect U.S. interests should there be a disruption in the orderly and equitable functioning of the ITU. This policy body should consist of developed countries and those developing countries which share our commitment to maximize global benefits from developments in telecommunications. Its immediate utility would be to provide a recognizable vehicle whereby the United States could seek to coalesce support from within the ITU for important issues that could alter the traditional functioning of the ITU. If properly utilized, the policy body would help implement an affirmative agenda that the United States and other countries would find essential. Accordingly, this body would be crucial to insure rational decision-making within the ITU.

While this policy would operate in a compatible fashion with the ITU, it also would provide much needed leverage within the ITU as it would represent a credible alternative to that body should its members compromise its technical integrity.

At present, there is no forum which represents an alternative to the ITU, an international organization in which the United States today retains membership only because we were able to prevent Israel's expulsion in Nairobi by four votes. As noted above, the slim margin of victory on this vital issue and politicization of the ITU through other actions taken in Nairobi, suggest a serious negative trend within the ITU which could force the U.S. to withdraw from the ITU following a significant unacceptable vote at one of the fifteen future ITU conferences. The establishment of a policy body as a compatible alternative to the ITU would insure that the U.S. has in place some optional means to perform the ITU's technical coordinating function should the ITU become dysfunctional. This option did not exist at the time the U.S. almost was forced to withdraw from the ITU during the Nairobi Conference.

RECOMMENDATION FOR CREATION OF AN INTER-AGENCY AND INDUSTRY TASK FORCE

Parallel to the establishment of this policy body, an interagency and industry task force made up of key government leaders in international telecommunications should be constituted and given the immediate task of determining exactly what are the pros and cons, from the U.S. standpoint, of establishing a permanent independent alternative to the ITU. This task force could be achieved by making the following discrete assignments to:

1. Identify and document each of the activities and functions of the ITU that are necessary and beneficial to U.S. telecommunication operations and development.
2. Determine which activities and functions carried out within the ITU could be conducted outside the ITU either in other international or regional organizations or through bi-lateral or multilateral agreements with other countries.

Using information developed under 1 and 2 above, this interagency-industry task force should undertake a comprehensive assessment that would have four distinct but related objectives:

1. Determine the feasibility of establishing particular alternative mechanisms to the ITU; the likelihood that other countries would cooperate with the United States outside the ITU; and which countries in addition to the United States would consider withdrawing from the ITU. Also determine the U.S. costs and effectiveness of participating in the ITU.
2. Examine ways for the United States to work within the ITU structure and improve its influence and effectiveness using information and recommendations developed in this Delegation Report to the Secretary of State on international telecommunication issues.
3. Examine ways for the United States to change ITU structure to one more amiable to U.S. interests and seek to improve U.S. influence and effectiveness under the modified structure.
4. Establish a U.S. policy framework providing incentives for the private sector—including the telecommunication service and equipment industry together with the financial community—to package U.S. technology and know-how and engage third world countries in mutually profitable joint ventures to improve their telecommunication services. Not only would this enhance the competitiveness of the U.S. industry in world markets and improve the US. balance of trade, but it also would favor U.S. objectives within the ITU. By addressing the third world problems at their source—improved telecommunication infrastructures—the current North/South debate over the role of the ITU and differences in objectives to be achieved within the ITU might be alleviated. In other words, treat the source of the problems outside the ITU. If successful, the current focus of debate within the ITU could be altered and U.S. influence increased.

The collective recommendations enunciated above will provide the U.S., both government and industry, an improved framework within which it can protect and en-

hance its interests in international telecommunications. Failure to aggressively pursue our interests both within and outside the ITU can only lead to an unnecessary disruption in the development of international telecommunications.

In summary, the U.S. has a clear dual mandate as a result of the proceedings at the Nairobi Conference. The U.S. must increase its involvement within the ITU in order to redirect the Union's activities. The U.S. must develop a compatible alternative to the ITU should our efforts to work within the Union fail to prevent further significant developments unacceptable to U.S. interests.

Senator GOLDWATER. Our next witness is Dr. Joseph Charyk, president and chief executive of Comsat.

Dr. Charyk, we welcome you, and you may proceed as you desire.

STATEMENT OF DR. JOSEPH V. CHARYK, PRESIDENT AND CHIEF EXECUTIVE OFFICER, COMMUNICATIONS SATELLITE CORP.

Dr. CHARYK. Thank you, Mr. Chairman.

I am very pleased to have this opportunity to present Comsat's views on S. 999, the International Telecommunications Act of 1983.

With your permission, I would like to submit a more detailed statement for the record and present a brief summary.

Senator GOLDWATER. It will be printed.

Dr. CHARYK. As you may recall, last year I appeared before this subcommittee to testify on S. 2469, the International Telecommunications Deregulation Act of 1982. At that time I urged the committee to concentrate its efforts to promote competition in international telecommunications through the encouragement of new services as opposed to additional transmission facilities. I emphasized that while increased competition in the provision of services could benefit users, the establishment of duplicative transmission facilities could adversely affect the quality and the cost of communications services available to the public.

We were encouraged to see the committee report legislation that emphasized services competition.

While S. 999 is similar in many respects to last year's bill, it differs materially in that it includes language that specifically encourages the establishment of satellite systems in competition with Intelsat. This language is found in section 304(a) of title III and paragraph 3 of section 2 of the bill. We believe that enactment of these provisions into law would constitute a fundamental change in U.S. policy, a unilateral abrogation of our international obligations, and a serious mistake. I urge that these provisions be removed from the bill.

Intelsat, which now has 109 member nations, is widely recognized as one of the most effective international organizations in the world today. Its success must be seen ε , one of the major foreign policy achievements in recent U.S. history. The United States more than any other nation is responsible for the creation and development of Intelsat, an achievement envisioned in the 1962 Satellite Act. The aim of that act, which is also reflected in the preamble of the Intelsat agreements, was to achieve a single global commercial satellite system. Intelsat was expected to be the provider of a worldwide telecommunications service to which all nations would have nondiscriminatory access.

U.S. policy has always been to support such a system and discourage the development of satellite systems that would be injurious to Intelsat's continued success.

S. 999 as currently drafted would mark the first major breach in the U.S. Government policy of supporting the integrity of this system. In the eyes of other nations, this is quite anomalous since the United States has given the most support in terms of both leadership and resources to insure the growth and success of Intelsat.

The public policy reasons for supporting a single global system are as cogent today as they were during the debate leading to the passage of the 1962 Satellite Act. A single global system can provide global planning on the basis of worldwide traffic forecasts and can achieve the advantages of economies of scale and rate averaging to allow all users worldwide affordable access.

I ask you to consider the implications of policy changes that could lead to the demise of the Intelsat system. There would certainly be a decrease in the efficient use of the orbital arc in the frequency spectrum. The United States would be placed in an almost impossible position at international planning conferences where we have been the prime advocate of conservation of these vital resources. In fact, attempts to pursue such a policy while simultaneously encouraging other systems would be self-defeating. We would be seeking the support for allocations from the very countries on whom we would have inflicted serious economic damage as a result of the abrogation of this country's obligations under the Intelsat agreements.

U.S. traffic to Intelsat would, of course, be reduced, as would our voting strength, not to mention our total role and influence, in an organization whose members would view this proposed policy change as an abrogation of our agreements, obligations, and commitments.

At a recent meeting of the signatories of the Intelsat organization, a resolution expressing the concerns regarding the consideration by the United States of the Orion satellite proposal was adopted without objection after a long list of countries had spoken strongly against the Orion concept. Not one voice was heard in support of such a proposal.

A proliferation of such systems could lead to the potential collapse of Intelsat into a thin-route system of last resort. Loss of traffic would also lead to increased Intelsat charges and a decrease in system efficiencies, particularly affecting Third World and developing nations who comprise over two-thirds of Intelsat membership. This has serious foreign policy implications for the United States.

The establishment of alternative systems would quickly hurt U.S. interests by creating an environment where foreign administrations could play one U.S. carrier off against another to seek their own best arrangements.

In addition, the establishment of separate systems would result in duplicative space and ground segment expenditures that would increase costs to U.S. users.

Finally, we believe there would be a harmful effect on U.S. trade revenues. U.S. manufacturers currently receive 75 to 85 percent of all Intelsat space contracts. A move away from support of Intelsat would inevitably lead to a far less favorable portion of this market for the United States in the years to come.

Mr. Chairman, for these reasons and others outlined in my more detailed submission, I urge you and the members of the committee

to remove those provisions in the bill which would establish U.S. policy encouraging the introduction of systems in competition with Intelsat. We believe in competition in the provision of services but not in unnecessary duplicative facilities.

I would now like to return to my original theme that competition in the international telecommunications arena should be focused in the area of service competition. Comsat recognizes the emerging marketplace and that the goals of this legislation and other regulatory activities under way in the Government are to promote competition and deregulation in the communications industry.

In anticipation of this changing market and a more competitive environment, Comsat plans to propose major adjustments in its international business practices. These changes and the means to implement them have been under rigorous study at Comsat for the past year. We believe that the implementation of thse changes will make progress toward achieving the goals of increased competition in international satellite communications while maintaining the U.S. commitment to Intelsat.

These changes, which would require a transition period, involve the following concepts: First, Comsat World Systems Division's present role as a carrier's carrier would be adjusted to a wholesale supplier's role in a deregulated Earth station marketplace.

Second, the present arrangement of joint facilities ownership would be dissolved. Separate ownership arrangements between retail carrier facilities and World Systems Division's wholesale carrier facilities at Earth station sites would be instituted.

Third, as a wholesaler, Comsat World Systems Division would develop a wide range of telecommunications services tailored to respond to the needs of the competing regail carriers.

Fourth, Comsat World Systems Division would develop a space segment only tariff in cases where the World Systems Division does not have ownership in ground segment failities.

And fifth, Comsat World Systems Division's present rate structure would be adjusted to allocated direct costs to the functions performed in providing each of the wholesale services offered to competing retail carriers, and the rates would reflect costs of each service.

And sixth, retail services offered directly to the public by Comsat would be offered through an affiliate fully separate from Comsat World Systems Division.

We believe that these changes will achieve a more competitive Earth station environment while continuing to assure access to Intelsat by all existing and any new competing retail service carriers. These changes cannot be implemented without the cooperation of Government and industry. FCC approval would be necessary. The States we are prepared to take to implement the changes I have described will be subject to public policy review, and we intend to work closely with the Congress and other agencies of the Government in such an effort.

Mr. Chairman, that concludes my oral statement. The written testimony covers many important sections of S. 999 that time does not permit me to address here. Of considerable importance, of course, are the proposed amendments to the 1962 Satellite Act. We also have, of course, a keen interest in other provisions such as

those affecting facilities planning, interconnection, authorized user, Earth station ownership, Government reorganization.

I would be happy to answer questions on these or any other subjects that you may have.

Senator GOLDWATER. Thank you very much, Doctor.

I want to compliment you on the way that Comsat is being run. I personally think it is going to make the greatest contributions that have been made to communications ever since smoke signals.

Dr. CHARYK. Well, you are very kind, Mr. Chairman, and I do think that we have to be pleased with an arrangement where we have 109 nations cooperating. The organization is run as a business. It provides good and efficient services. It makes a profit. And, 109 nations pay their bills, and I think that is rather unusual in any international undertaking.

Senator GOLDWATER. I do, too.

You even have two Indian tribes in my State that are beginning to learn better health methods through the use of your equipment.

Dr. CHARYK. I think we have only begun to tap the potential.

Senator GOLDWATER. What do you anticipate as options in the number and types of services to be provided your retail customers under your new plan?

Dr. CHARYK. Mr. Chairman, I think we are seeing the melding of two technologies, the classical telecommunications and information processing. The marriage of the computer and communications ages has just occurred. And I think that we are going to be moving around bits of information and combining them for a variety of purposes, for telephone, for television, tying computers together, performing new and different kinds of services. I think that the opportunities in this new computer and communication age are unbelievable, particularly for the people that have the initiative and vision to see the new kinds of services people are going to want as these two technologies come together. The ability to provide these services on a global basis is going to open up opportunities of untold proportions.

What we are seeking here is the opportunity for a highly competitive environment, for companies with imagination and vision, to provide these kinds of services and to be able to do so on an international basis.

We see programs that can be important in business, in education, in entertainment, pretty much across the board, and as these technologies come together, these new services become broader, more powerful, and I think more exciting.

Senator GOLDWATER. Well, we are already running into opposition from AT&T relative to cable television, with their idea that it could replace parts of their services.

Do you see that same objection being raised to Comsat when it becomes available to the public?

Dr. CHARYK. Well, I think that the objections that you are seeing now are aimed at seeking other types of international space segments which I think are counterproductive in the sense that it will not produce anything new in the way of services. They will simply lead to increased costs for the user, and as I indicated in my statement, could produce disastrous results in our international relationships.

I think if that energy and initiative were focused on the new kinds of services that are possible, then these kinds of objections will go away.

I think that the technology is opening up opportunities which can challenge all of us. Rather than trying to compete in me-too facilities, we ought to be looking at new and novel services that we can provide to better serve the public.

Senator GOLDWATER. I agree.

Do you think your offering of these services would require the FCC approval?

Dr. CHARYK. Yes. We have had a continuous struggle over 20 years as to what kinds of services we can provide. The Department of Defense witness made some reference to those struggles. It would require FCC action to authorize the type of changes that I have indicated in my summary statement.

Senator GOLDWATER. What separate retail-wholesale ownership arrangements for Earth stations do you anticipate?

Dr. CHARYK. We would anticipate, first of all, a change in the nature of the ownership and operation of the stations that we have today. By FCC edict, our present stations are 50 percent owned by the carriers and 50 percent owned by the Comsat. Comsat manages and operates the stations. The charges to the various users are uniform in the sense that the charge per circuit is the same.

We would propose to move into an arrangement whereby the ownership pattern would be abandoned and the operation of the station would be geared to performing a variety of services to suit the needs of the retailers who come to the station. The charges would be in relationship to the services performed at the station. So instead of having a flat set of charges, we would perform a variety of services to meet the needs of the customers, and we would adjust our charges in proportion to the services rendered.

We think that this will remove some of the obstacles to competition that have existed in the past and remove some of the arguments that the carriers and others have used in regard to the Earth station ownership arrangement.

Where it was more efficient or effective to create another station other than one of our existing stations, we would have a space segment only tariff for access directly to the satellite system. We think that there will be cases where these new stations will be desirable, and we would encourage and promote the creation of these stations where they are clearly justified and where the job could not be performed as efficiently or as economically through one of the existing stations.

Senator GOLDWATER. Thank you.

How would your proposal guard against the possibility of anticompetitive dealings between Comsat's retail and wholesale activities.

Dr. CHARYK. Well, first of all we would have a separate subsidiary with no common officers. It would have some similarities to the reorganizational arrangements that were instituted for the Bell System. The FCC would always be there to insure that such anticompetitive actions did not take place, or if there was a concern about some potential anticompetitive actions, that proper guidelines would be put into place before those things became a problem.

Senator GOLDWATER. Orion will testify that its proposal only complements the Intelsat system, that privately owned transponders for private use in no way impinges on the common carrier-like services of Intelsat.

Is Orion not correct, that the distinction gives rise to the need for consideraton of Orion apart from the Intelsat constraints?

Dr. CHARYK. Mr. Chairman, that is just pure nonsense. The Orion space segment would produce absolutely nothing new. It has nothing innovative about it whatsoever. It is duplicative of facilities and would add nothing to the scene. And as I indicated, it could do serious damage to our international relationships and to the health of the Intelsat organization. It would be completely counterproductive to the production of new and desirable communication services.

I think it is also interesting that, at the recent meeting of signatories of Intelsat, with 109 nations participating, the better part of a day was spent listening to spokesmen from practically every part of the world indicate pretty much what I have just said. Not a single voice was raised in support of the concept, by any country in Europe, by any country in Asia, by any country in South America. I think it is uniformly regarded as providing nothing additive to world communications and only planting the seeds for serious trouble.

Senator GOLDWATER. Thank you.

I note that Comsat's World Systems Division announced several days ago that it planned to lease capacity on an Atlantic Intelsat satellite to transmit TV programs.

Has Comsat offered these types of services before, and is it not similar to the service proposal to be offered today by Orion?

Dr. CHARYK. Well, as I indicated, Orion has not proposed to provide anything new. All of the services that any customer has indicated a need for can be provided through the Intelsat system. We have full time television now to various parts of the world, to Australia, to Diego Garcia, and that service is growing. We have new business services that are being provided.

There is not a single service that Orion would propose to provide that cannot be provided better and more economically through the existing facilities.

Senator GOLDWATER. Well, would you agree that we will get increased pressure to license what you may call competing systems?

How do we continue to resist that pressure and be faithful to our procompetitive policies and our existing treaty obligations?

If you agree, is there a way you can help in finding this?

Dr. CHARYK. I am strongly for competitive service offerings. I am opposed to wasting resources in the creation of duplicative facilities that provide nothing new. If Intelsat were to fail to respond to a particular type of service request, or if the Intelsat facilities were incapable of offering certain kinds of services, then I think we should clearly support the creation of other facilities that would do the job because the customers' needs should be met.

But I think where the system has been responsive, where it operates effectively, where it operates economically, and where the net effect of duplicating those facilities would simply be to increase the

costs, then I do not think that such facilities should be considered, and certainly not authorized.

Senator GOLDWATER. Well, Doctor, we appreciate your being here very much.

Dr. CHARYK. Thank you, Mr. Chairman.

Senator GOLDWATER. We wish you Godspeed.

Are you looking at 1986, or have you moved it up apiece?

Dr. CHARYK. Things are happening so fast that it is hard to keep track. It is a very exciting business. As I say, this marriage of the communications and the computer ages opens up dazzling possibilities for the future, and I think we are going to see things happening on an ever-increasing scale.

Thank you.

Senator GOLDWATER. Thank you very much.

[The statement follows:]

STATEMENT OF DR. JOSEPH V. CHARYK, PRESIDENT AND CHIEF EXECUTIVE OFFICER, COMMUNICATIONS SATELLITE CORP.

Mr. Chairman, I am Joseph V. Charyk, President and Chief Executive Officer of Communications Satellite Corporation (COMSAT). I am pleased to have the opportunity to present COMSAT's views on S.999, the International Telecommunications Act of 1983.

As you may know, COMSAT celebrated its twentieth anniversary on February 1, 1983. We are proud of our efforts over the course of the last two decades to establish a single, global commercial communications satellite system. The United States has played the instrumental role in turning a commercially untested technology into a thriving, cooperative enterprise. The International Telecommunications Satellite Organization, INTELSAT, which now carries about two-thirds of the world's intercontinental telephone traffic and virtually all intercontinental television transmission has proved to be an outstanding technical and economic success.

In the relatively short period of eighteen years, membership in INTELSAT has grown from 11 to 109 nations. The capacity of INTELSAT satellites has increased from Early Bird's 240 simultaneous voice circuits in 1965 to the 12,000 voice circuits now provided by each INTELSAT V satellite and the more than 30,000 circuits to be provided by each new INTELSAT VI satellite. The INTELSAT global communications network now carries traffic over more than 1,100 pathways that link 446 earth stations in 169 countries and territories.

Although the cost of building and launching satellites has increased steadily, the unit cost of satellite circuits has declined as satellites with longer life and greater capacity have been added to the system. As a result, user costs have been reduced significantly since the inception of satellite services. The remarkable growth and stable management of the space segment by INTELSAT reflect favorably on the foresight of the United States Government in enacting and implementing the provisions of the Communications Satellite Act of 1962.

Today, however, our industry is undergoing a massive transformation, prompted by a variety of factors: the merging of data processing and telecommunications technologies, increasing demand for enhanced communications services and new, high capacity digital satellite and fiber optic cable technologies.

Dramatic and far reaching changes are underway in the total domestic telecommunications structure stemming from the government's move towards deregulation, the blending of communications and information technologies to produce new products and new services and the restructuring of AT&T.

The international scene is also, of course, affected by the changing technology, but other factors are dramatically different.

Our domestic policies, industry structure and national objectives are not necessarily shared by other countries. The United States is unique in its commitment to the ownership and operation of telecommunications facilities by the private sector. Most other countries have placed the ownership and operation of communications systems under government control. As such, the establishment of competing international facilities by many foreign governments would result in an administration in competition with itself.

S. 999 addresses these differences between the U.S. domestic marketplace and the international marketplace. Under the bill, the FCC will continue to have regulatory

responsibilities to further the U.S. public interest while at the same time having sufficient flexibility to adjust the type and degree of regulation necessary. This flexibility is particularly appropriate internationally where the circumstances differ from the domestic market, vary widely from country to country and where U.S. foreign policy considerations bear heavily on U.S. decisionmaking. The responsibilities of the President for foreign policy and its impact on U.S. telecommunications must be taken into consideration.

In assessing U.S. international telecommunications policy, it is important to consider both the differences in marketplace structure and the success of INTELSAT and its multinational character. I would caution against unilateral policy decisions that are inconsistent with or contrary to the principles upon which the INTELSAT system was founded. I will now turn to the provisions of S.999 which, in my opinion, raise serious policy questions in this regard.

COMPETING INTERNATIONAL SYSTEMS

I call the subcommittee's attention to Section 304(a) of Title III which would amend Section 102(d) of the Satellite Act to loosen the stringent standards governing the establishment of systems outside the INTELSAT framework. Also, Section 2(3) of S. 999 states that it is essential to encourage the entry of new carriers in the offering of international telecommunications services and facilities.

These provisions must be read as specifically encouraging the establishment of satellite systems in competition with INTELSAT. This is a major change in U.S. policy and one which we feel could have disastrous consequences. While we support the general objective of increased competition, we believe it is important to distinguish between competition in the provision of international satellite communications services and competition in the provision of international satellite transmission facilities. We believe that, while increased competition in the provision of services will benefit the user, the establishment of alternative international satellite transmission facilities would lead to the dissolution of the INTELSAT system and would adversely affect both the quality and cost of communications services for the U.S. users, as well as raise serious questions in international deliberations on the allocation of frequencies and orbital slots.

The circumstances under which the United States might establish, acquire or use space segment facilities separate from INTELSAT are currently governed by Section 102(d) of the Communications Satellite Act of 1962 ("Satellite Act"), which provides for the authorization of additional systems only "if required to meet unique governmental needs or otherwise required in the national interest."

For the United States now to adopt a national policy endorsing and encouraging competition in the provision of international satellite transmission facilities would be to undermine a very carefully balanced compromise reflected in the INTELSAT Agreement concerning the relationship between INTELSAT and other satellite systems intended to carry public international telecommunications traffic. This compromise, which was the result of complex and protracted negotiations, is reflected in Article XIV (d). It permits the establishment of separate international systems only if the party or parties proposing such a system can domonstrate that the system (1) is technically compatible with the existing or planned INTELSAT space segment; and (2) will not cause "significant economic harm to the global system." In this regard, the INTELSAT agreement is a reflection of the concerns expressed in Section 102(d) of the communications satellite Act of 1962, which would permit additional systems only "if required to meet unique governmental needs or if otherwise required in the national interest."

This policy is reaffirmed in a July 1981 letter to the Federal Communications Commission from James L. Buckley, Under Secretary of State for Security Assistance, Science, and Technology and in the Commission's October 1981 Transborder Satellite Video Services decision. Both the Buckley letter and the Transborder Satellite Video Services decision confirm that the foundation of U.S. international communications satellite policy is the concept of a global system to which all nations can have nondiscriminatory access and that the integrity of the INTELSAT system is important in achieving the goals established in the Communications Satellite Act of 1962. The Buckley letter further states that the United States has always been a vigorous proponent of the principles enunciated in the INTELSAT agreements and has lent broad support to the growth and success of the global system and that this support will continue. For these reasons, the Commission concluded that the U.S. commitment to the global system could accommodate use of non-INTELSAT space segment facilities only in certain exceptional circumstances, such as where the

global system could not provide the service required or where the service planned would be clearly impractical or uneconomical using the INTELSAT system.

Thus, acceptable uses outside the global system have been made under very limited circumstances. These exceptions have been granted after a determination was made that the proposed services would not other wise have been provided by INTELSAT and would not cause economic harm to the INTELSAT system. None of these domestic systems, or other regional systems, has attempted to compete directly with INTELSAT by providing duplicative facilities in a high density traffic route. The enactment of these two provisions in S. 999 encouraging or permitting competing systems therefore would be tantamount to reversal of our policy of support for INTELSAT.

We also question whether there is any justification for modifying Section 102(d) of the Satellite Act, as proposed by Section 304(a) of S. 999. As I noted earlier, Section 102(d) does not preclude use or creation of additional satellite systems under any circumstances; rather it establishes as a threshold requirement that such systems be "required in the national interest." Given our longstanding commitment to the INTELSAT system, I do not believe that a weaker standard would be appropriate. Nor, I would add, has there been any showing that the current standard has proven to be so strict that its weakening is necessary. Indeed, the circumstances surrounding the issuance of the Buckley letter and the Commission's subsequent actions in the Traqsborder Satellite Video Services decision constitute strong evidence that the existing standard has enabled the United States to use non-INTELSAT satellite facilities when a compelling need to do so was presented.

The provisions weakening our support of the INTELSAT agreement would also surely lead to serious problems in the resolution of radio frequency and orbital slot allocations in international fora where these questions must be addressed. Conclusions from such international meetings could easily thwart the implementation of a United States policy aimed at proliferation of satellite systems for purportedly competitive reasons.

EXPANDING THE INTELSAT SYSTEM

Ultimately, the goal of all involved in structuring international satellite communications policy should be the provision of a maximum variety of communications services at reasonable costs to users while advancing U.S. interests at home and abroad. Thus, the question is not whether the INTELSAT established system should be protected against competition, but whether this major international cooperative effort should be jeopardized to the great detriment of the domestic and worldwide user community.

Rather than encourage the dismantling of the INTELSAT system, we would urge the continued support of the system as it expands its service offerings to meet the changing requirements of its users. The range and scope of INTELSAT's services are under continuous review and development. Examples of this are the international leased television channel service, which is available on a long-term and short-term basis, and the soon to be implemented INTELSAT business services. The new full-time international television leases will be used in the 1980's for the exchange of cultural, educational, entertainment and sports programming, health information, and a wide range of other services between the U.S. and other countries. New INTELSAT business services, which have been under development for more than a year and which will be introduced shortly, will provide data communications facilities operated over a wide range of transmission rates to permit integrated digital communications services internationally. This service will be introduced initially in the Atlantic Ocean region because of the predominance of demand in this region and subsequently will be extended throughout the INTELSAT global network.

COMSAT'S INTERNATIONAL BUSINESS PRACTICES

COMSAT recognizes the emerging marketplace and that the goals of this legislation and regulatory activities under way in the Government are to promote competition and deregulation in the communications industry. In anticipation of this changing market and a more competitive environment, COMSAT plans to propose significant adjustments in its international business practices. These changes and the means to implement them have been under rigorous study at COMSAT for the past year. We believe that the implementation of these changes will go far toward achieving the goals of increased competition in international satellite communications while maintaining the United States' commitment to INTELSAT.

These changes, which would be accomplished over a transition period, involve the following key elements:

COMSAT World Systems Division's present role as a carriers' carrier under existing regulatory policies would be adjusted to rely on marketplace forces and less on regulatory requirements. World Systems Division would undergo a transition to a wholesale supplier role in a deregulated earth station marketplace. Our retail carrier customers would have increasing options regarding the amount and types of services they choose to purchase from the wholesale supplier.

The present arrangements of joint facilities ownership would be dissolved, and there would be a transition to new ownership arrangements for U.S. earth stations. Separate ownership arrangements between retail carrier facilities and World Systems Division's wholesale carrier facilities at earth station sites would be instituted.

As a wholesale supplier, COMSAT World Systems Division would develop a range of services tailored to respond to the needs of the competing retail carriers.

COMSAT World Systems Division would develop a space segment only tariff to accommodate access to INTELSAT space segment in cases where World Systems Division does not have ownership in ground segment facilites.

COMSAT World Systems Division's present rate structure would be adjusted during a transition period to allocate direct costs to the functions performed in providing each of the wholesale services offered to competing retail carriers. Rates would reflect costs of each service.

Retail services offered diretly to the public by COMSAT would be offered through an affiliate fully separate from COMSAT World Systems Division with both marketplace and regulatory safeguards to protect against potential anti-competitive practices.

We believe that these proposed changes will achieve a more competitive earth station and service environment by allowing COMSAT World Systems Division to perform in the marketplace to retain the business of its retail carrier customers, while continuing to assure access to INTELSAT by all existing and new competing retail service carriers.

These change cannot be implemented without the full cooperation of the Government and industry. FCC approval would be necessary. The steps we have under consideration would be subject to public policy review, and we intend to work closely with the Congress and other agencies of the Government in such an effort.

Let me turn now to a review of certain specific provsions of S.999.

TASK FORCE/SPECIAL REPRESENTATIVE PROVISIONS

Sec. 203 would establish a Special Representative for Telecommunications and Information within the Executive Office of the President. The Special Representative would be the chief representative of the United States at international telecommunications conferences and would advise the President and Congress with respect to U.S. international telecommunications policy. I believe that the creation of such a position could be a positive step. If such a position were to be created, the appointee should have a strong background in the international telecommunications arena, high level stature in the Executive Office of the President, a keen awareness of the need for more streamlined, effective policymaking in the face of foreign competition in international telecommunications and a small, competent staff. This position, if structured properly, could be the much needed focal point for U.S. policy decisions. In this regard, I also believe the creation of the position of Assistant Secretary of State for Telecommunications Affairs would raise the level of debate regarding the formulation of U.S. international telecommunications policy.

Sec. 204 of S. 999 would establish an International Telecommunications and Information Task Force. The Task Force would have broad authority to coordinate policies, review policy determinations, conduct a study of long-term goals, and review the structures, procedures and mechanisms used to develop telecommunications policy.

I recognize the need for some kind of high-level policy coordinating and review mechanism. As I have noted in other parts of my statement, the continued availability and future development of telecommunications services are vital to our national interests. Because of this, we need to insure the proper development and implementation of communications policies. I have strong reservations, however, about the ability of a task force to deal effectively with a broad range of issues and interdepartmental interests. This function can be best carried out by the Special Representative that would be established by Section 203, and I believe the Task Force is unnecessary.

AMENDMENTS TO THE COMMUNICATIONS SATELLITE ACT OF 1962

As the Subcommittee knows, the 1962 Act includes a number of provisions that apply certain unique corporate characteristics to COMSAT. It was felt appropriate at the time of enactment to include these provisions because COMSAT was to be created as a new entity to carry out the statutory mandate to represent the United States in a global communications satellite system. Under this mandate, COMSAT has been and remains committed to promoting the United States' interests in INTELSAT and INMARSAT. These objectives are still important.

Presidential Directors. The 1962 Act provides for the appointment by the President, with the advice and consent of the Senate, of three members of the COMSAT Board of Directors. Section 304(d) of S. 999 would repeal this provision. Throughout the history of COMSAT, the Presidentially appointed directors have made valuable contributions to the Board. Also, COMSAT continues to have a special role in representing the United States within INTELSAT and INMARSAT, a factor that should be carefully considered in addressing the possibility of eliminating the Presidentially appointed directors. We believe that the provisions of the 1962 Act providing for the presidentially appointed directors should be retained.

Corporate financing. Section 304(b) of S. 999 repeals section 201(c)(8) of the 1962, Act, which requires Commission approval of any new issues of stock, borrowing of money or assumption of obligations in respect of the securities of any other person. We support the repeal of this section in order to permit COMSAT to direct its own financial affairs in keeping with sound management practices and recognized accounting procedures.

Incorporation and no-par value stock. Sections 304(c) and 304(e) would permit the incorporation of COMSAT in any U.S. jurisdiction, not just the District of Columbia, and would authorize COMSAT to issue par as well as no-par value stock, respectively. We support these provisions.

UNSTRUCTURED GROWTH OF EARTH STATIONS

Section 304(i) of S. 999, allows the Commission to authorize non-carriers to own earth stations. While we anticipate orderly change in the ownership and operation of earth stations, we need to guard against unstructured growth that could result in costly inefficiencies and a degradation in service for all system users.

AUTHORIZED USER POLICY

Sections 304(g), 304(a)(3), and 304(j)(3) of S. 999 address the authorized user issue. These provisions deal, of course, with the question of which users other than authorized carriers can acquire channels of communication directly from COMSAT. Section 304 provides that any party may deal directly with COMSAT for communication satellite channels whenever the Commission finds it to be in the public interest. This is consistent with our interpretation of the authorized user provision of the 1962 Act and with the Commission's recent review and decision on its Authorized User policy.

OTHER SIGNIFICANT PROVISIONS

Facilities planning. We support section 608, which provides for the Commission to establish a process for the planning, construction and utilization of international facilities. However, Section 608 suggests a shift in the commission's role from establishing guidelines and procedures for facilities planning to that of an overseer. We believe that the commission should continue to establish guidelines for the facilities planning process. We note that Section 608(b) explicitly provides for the Commission to take account of the views of other sovereign nations in reaching decisions on the construction and use of international transmission facilities.

Interconnection. While we generally support the interconnection requirements of Section 606, we believe that the Subcommittee should clarify that the requirement for "cost-based" charging does not imply cost-based access to transmission facilities but refers only to cost-based charging for the interconnection facilities or the services themselves.

CONCLUSION

Mr. Chairman, it is vitally important as you consider S. 999 to distinguish between the domestic and international communications marketplaces and between competition in facilities and services. United States public policy can address domestic communications issues unilaterally; however, other nations and organizations

beyond the control of our laws and regulations are essential parties to international communications. The structure of foreign markets is different from our own, due in large part to government ownership of communications facilities in most countries. United States policy must not be established without regard for other nations or the concept of the single global satellite system to which this nation is committed by the INTELSAT agreements and the Communications Satellite Act of 1962. A reversal of U.S. policy opposing the development of competing satellite transmission facilities would lead to a degradation of the INTELSAT system, adversely affecting both the quality and the cost of communications services for the general public. The key to competition in the international arena lies in the promotion of services competition.

COMSAT is responding to changes in the international telecommunications market with a series of proposals to change basic elements of its international business practices. We look forward to working with Congress, the Federal Communications Commission, and other government and industry entities as we progress toward these goals.

Senator GOLDWATER. And now we have a panel of three gentlemen: Mr. Santiago Astrain, who is director general of Intelsat; Mr. Christopher Vizas, executive vice president of Orion Satellite; and Mr. Richard Colino, who is candidate for director general of Intelsat.

Gentlemen, the Chair would like to recognize it is rather unusual to have an international organization appearing before our committee, and we welcome you here. If you want to deviate from your prepared statements, you may, but your statements will be made a part of the record.

You may proceed in any way you wish.

STATEMENTS OF SANTIAGO ASTRAIN, DIRECTOR GENERAL, INTELSAT; CHRISTOPHER J. VIZAS II, EXECUTIVE VICE PRESIDENT, ORION SATELLITE CORP.; AND RICHARD R. COLINO, CANDIDATE FOR DIRECTOR GENERAL OF INTELSAT

Mr. ASTRAIN. Thank you, Mr. Chairman.

I would like also to note that we will submit a longer statement with some background for the record of what I am about to say.

Mr. Chairman, my name is Santiago Astrain, and I am the elected director general of the International Telecommunications Satellite organization. Intelsat, as you know, is the internationally owned 109-member country organization that owns and operates the 16-satellite system which currently provides two-thirds of the world's overseas communications, including almost all overseas television.

It is unusual for Intelsat as an international organization to participate in proceedings such as these, but we consider this a special circumstance because of the direct impact upon Intelsat and its members of certain provisions in the bill now before you, S. 999. I therefore appreciate the opportunity to appear here today on behalf of Intelsat to express our concerns.

Intelsat is not an agency of the United States nor of any other government. The United States participates in Intelsat as one of its 109 member countries, and its signatory has a 24-percent share of Intelsat's $2 billion space segment. The remaining investment is provided by other governments or entities appointed by them. Intelsat is a truly international intergovernmental organization, established by two international agreements and providing an essential telecommunications service worldwide on a successful commercial basis.

The Communications Satellite Act of 1962, which was adopted after thorough consideration by the U.S. Congress and which sets forth the principles upon which Intelsat was subsequently created, took as its aim the establishment and support of a single global satellite telecommunications network. That policy extended the benefits of satellite telecommunications worldwide on a commercial basis and stated that, "Care and attention will be directed toward providing such services to economically less developed countries and areas as well as those more highly developed." That is the way Intelsat was designed to operate by the leadership of this country. Indeed, Intelsat constitutes a widely recognized major U.S. foreign policy achievement. The United States chose to place international satellite communications under this cooperative arrangement rather than develop the then-exclusive technology in a unilateral way.

Mr. Chairman, that policy has worked. Intelsat today is recognized worldwide as a remarkable success, operating without ideological contention and on a sound business foundation. It remains a monument to the initiative and breadth of vision of those who participated in the formulation of its principles and purposes. Today Intelsat is the only means for numerous developing countries to communicate with the rest of the world, and is the only organization that makes satellite capacity available worldwide not only for heavy routes but for medium and thin traffic routes as well, and for domestic traffic.

This should be borne very much in mind when considering the possible impact on other governments of initiatives currently before you.

Since the U.S. Congress first expressed itself on this subject, Intelsat has come into being and compiled a remarkable record of performance.

Some 170 countries and territories rely on Intelsat for international services, and of these, 23 rely on us for domestic services as well.

These services are provided by a 16-satellite global network which represents a most efficient utilization of orbital arc resources.

Intelsat's utilization charges, adjusted for inflation, are now one-eighteenth of the level they were in 1965.

As these figures show, Intelsat's services have grown and improved and become less costly over time. The organization is alive to new technology and service opportunities, and it is economically efficient. But to continue to provide these benefits on a global and nondiscriminatory basis as it was created to do, Intelsat must be able to rely on the revenues derived from its heavy route and transoceanic traffic. This is what the Intelsat agreements, promoted and subscribed to by the United States, among others, provided for when they established the aim of creating, a single global commercial telecommunications satellite system. And that is what would be undermined by the proposal before you to open up multiple international commercial systems which are likely to serve only heavy traffic and lucrative routes.

Mr. Chairman, that is why I am appearing before you today. Certain provisions in the proposed legislation before you pose a serious

challenge to Intelsat's continued viability. Particularly, section 304(a) of that bill would amend the Communications Satellite Act of 1962 and would open the door to the establishment of other satellite telecommunications systems to carry international traffic and without imposing upon them any of the obligations or conditions imposed on the Intelsat system.

We recognize, Mr. Chairman, that the United States is in the process of opening up its internal communications sector to competitive entry. That is most certainly the prerogative of this country. However, there are many differences between domestic and international telecommunications environments. In addition, of course, the principles and mutual obligations contained in an international agreement such as Intelsat's cannot be amended by legislation in one country alone.

I would not wish this subcommittee to believe that Intelsat is insensitive to the claims of appropriate competition.

First, the Intelsat agreements do not speak to the structure for distribution of international traffic within countries. Within the framework of the Intelsat agreements, each party or signatory may make internal arrangements for the distribution of Intelsat capacity in any manner it chooses, involving any degree of competition in the provision of service to end users which is considered to be in its national interests.

Second, the Intelsat agreements themselves contemplate the possibility of separate satellite systems. Article XIV establishes a procedure for consideration of technical and economic compatibility of separate systems with Intelsat's global system, and certain separate systems have indeed been authorized under those procedures, Arabsat, Eutelsat, and Palapa, to name three, because they have been found by Intelsat not to cause significant economic harm.

But, Mr. Chairman, Intelsat has never been faced with proposals for rival systems aimed at diverting current or planned heavy route traffic away from the Intelsat system. However, the legislation before you would encourage such proposals, and their establishment would affect the basic principles on which Intelsat was created.

Systems serving only heavy traffic routes and freed from the responsibilities of our global system could exact lucrative profits for themselves, just as, obviously, the withdrawal of such revenues from the global system would severely impair Intelsat's ability to economically provide service to the rest of the world. This would constitute an inequitable form of competition. Intelsat's revenues would decrease while its capital costs would remain the same. The pattern of rate reduction based on capturing the dual factors of economies of scale and technological innovations would be abruptly reversed. Rates would have to increase not only for users in the United States but also for users in all other parts of the world. The international repercussions of a worldwide rate increase could be considerable, and are likely to be felt intensely everywhere, and especially in the Third World countries.

Furthermore, the language proposed in section 304(a), if implemented, would in fact set an international trend that would divide the world of global satellite communications. A pattern of satellite systems specifically geared to international heavy-route traffic may

be expected to follow, sponsored by other countries possessing space capability. If the United States, the founding father of Intelsat and its strongest supporter, reverses its longstanding policy and sanctions the existence of such international satellite systems, the principle of a single global satellite system embodied in the Intelsat agreements now binding 109 countries would erode quickly. Other countries would see no impediment to following the same course.

These are our grave concerns, and this is why we have taken the unusual step of appearing in this domestic legislative process.

Mr. Chairman, I would submit that such statutory language is unnecessary because Intelsat has proven its economic efficiency, is subject to technological and pricing competition from ever-improving submarine cables, and because its adoption would mean a reversal of the longstanding U.S. role of supporting Intelsat's basic principles as they are reflected in its constitutive agreements.

My principal purpose here today is to make sure that this committee knows and appreciates the strength and depth of concern of Intelsat's member countries. I invite you, in reviewing the appropriateness of section 304(a), to bear in mind that the Intelsat meeting of signatories at its thirteenth meeting, held in Bangkok, Thailand only 3 weeks ago, took the exceptional action of adopting a unanimous resolution in connection with a recent proposal by a U.S. corporation for a separate transatlantic satellite system. The resolution states that such a proposal, and I quote, "challenges the underlying purposes for which Intelsat was created and the establishment of one or more competitive satellite systems diverting international transoceanic or other heavy-route traffic from the Intelsat system would have a fundamental impact on the viability of the single global commercial telecommunications satellite system, and would entail serious financial consequences for all Intelsat users."

The resolution also requested me to convey the concerns of the meeting of signatories to the U.S. Government.

Mr. Chairman, the essence of Intelsat's concerns that I have attempted to formulate today may be summarized as follows:

Allowing additional satellite systems without the global responsibilities of the Intelsat system and likely to serve only heavy traffic routes would constitute inequitable competition and would inevitably result in higher costs for all telecommunications users in both developed and developing countries. This includes higher costs to U.S. citizens and businesses in communicating with many parts of the world.

Second, submarine cables are an effective and sufficient source of technological competition to ensure that Intelsat continues to achieve the highest levels of efficiency in its services at the lowest possible cost.

Third, the proliferation of additional international satellite systems would worsen the problem of saturation of the geosynchronous orbital arc and the problem of equitable access to this resource by all countries.

And fourth, in signing the Intelsat agreements, all Intelsat members have agreed to the basic principles upon which it was created, namely, to aim toward a single global system with a nondiscriminatory access by all countries of the world. The establishment of sep-

arate heavy-route international satellite systems would run fundamentally counter to these basic principles and would endanger the viability of the Intelsat system.

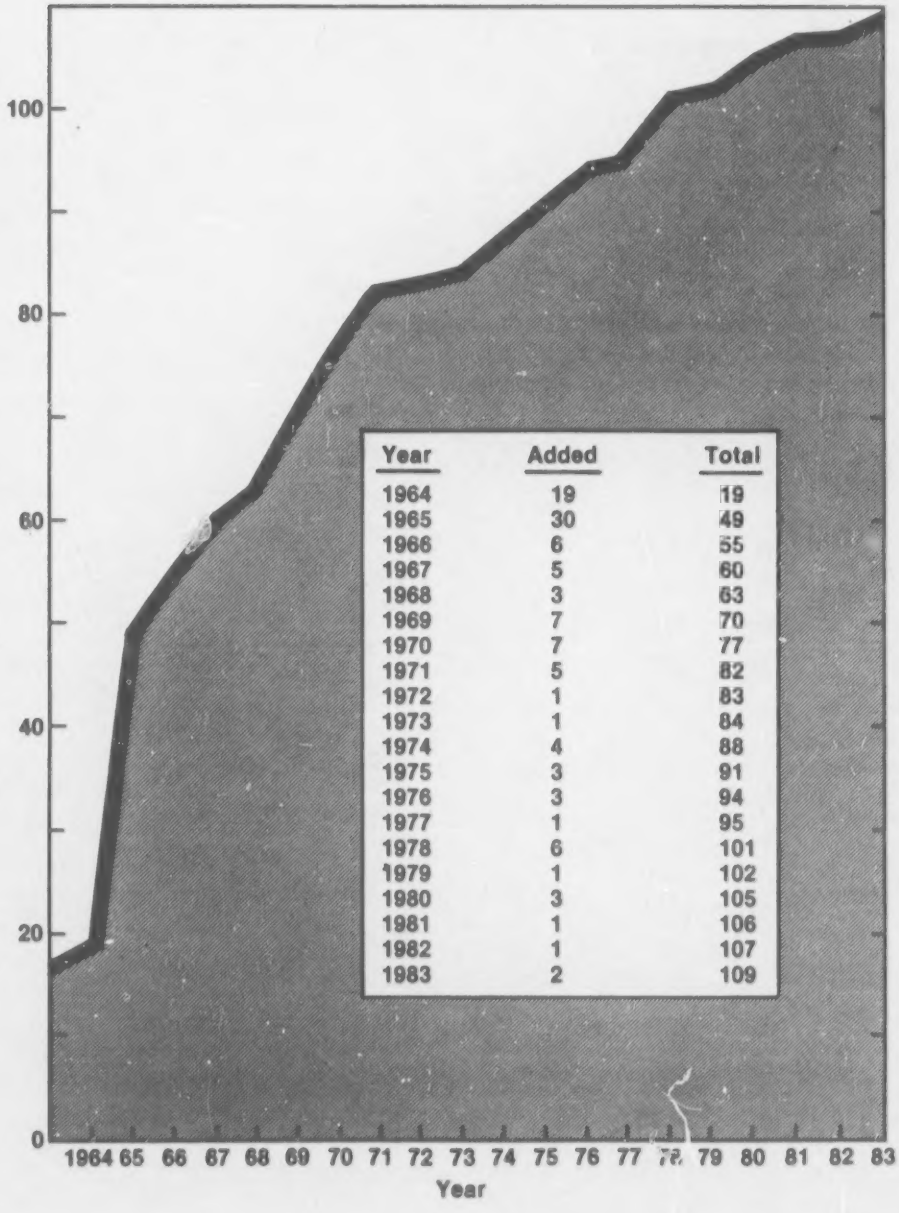
We appreciate the opportunity to appear and express our views to the subcommittee on this important subject.

Thank you.

[The attchments follow:]

FIGURE 1

INTELSAT
Growth in Membership



Year	Added	Total
1964	19	19
1965	30	49
1966	6	55
1967	5	60
1968	3	63
1969	7	70
1970	7	77
1971	5	82
1972	1	83
1973	1	84
1974	4	88
1975	3	91
1976	3	94
1977	1	95
1978	6	101
1979	1	102
1980	3	105
1981	1	106
1982	1	107
1983	2	109

FIGURE 2

INTELSAT Members

OECD Countries' Investment Share

Australia	- 3.46	Greece	- 0.93	Norway	- 0.46
Austria	- 0.26	Iceland	- 0.10	Portugal	- 0.70
Belgium	- 0.77	Ireland	- 0.13	Spain	- 1.94
Canada	- 2.49	Italy	- 2.37	Sweden	- 0.59
Denmark	- 0.50	Japan	- 3.10	Switzerland	- 1.34
Finland	- 0.09	Luxembourg	- 0.05	Turkey	- 0.23
France	- 5.86	Netherlands	- 1.09	United Kingdom	- 13.30
Germany, Fed. Rep. of	- 3.59	New Zealand	- 0.44	United States	- 24.10
					67.89%

Non-OECD Countries' Investment

Afghanistan	- 0.05	Honduras	- 0.05	Paraguay	- 0.12
Algeria	- 0.49	India	- 0.96	Peru	- 0.53
Angola	- 0.11	Indonesia	- 0.40	Philippines	- 0.65
Argentina	- 1.15	Iran, Islamic Rep. of	- 1.12	Qatar	- 0.39
Bangladesh	- 0.10	Iraq	- 0.41	Saudi Arabia	- 3.02
Barbados	- 0.05	Israel	- 0.58	Senegal	- 0.05
Bolivia	- 0.05	Ivory Coast	- 0.39	Singapore	- 1.15
Brazil	- 3.05	Jamaica	- 0.53	Somalia	- 0.05
Cameroon	- 0.24	Jordan	- 0.30	South Africa	- 1.20
Central African Rep.	- 0.05	Kenya	- 0.34	Sri Lanka	- 0.05
Chad	- 0.05	Korea, Rep. of	- 0.73	Sudan	- 0.37
Chile	- 0.58	Kuwait	- 0.93	Syria	- 0.15
China, People's Rep. of	- 0.34	Lebanon	- 0.24	Tanzania	- 0.05
Colombia	- 0.76	Libya	- 0.15	Thailand	- 0.50
Congo	- 0.05	Liechtenstein	- 0.05	Trinidad & Tobago	- 0.05
Costa Rica	- 0.05	Madagascar	- 0.05	Tunisia	- 0.05
Cyprus	- 0.13	Malaysia	- 0.24	Uganda	- 0.05
Dominican Republic	- 0.05	Mali	- 0.09	United Arab Emirates	- 1.79
Ecuador	- 0.34	Mauritania	- 0.05	Upper Volta	- 0.05
Egypt	- 0.37	Mexico	- 0.72	Uruguay	- 0.05
El Salvador	- 0.05	Monaco	- 0.05	Vatican City State	- 0.05
Ethiopia	- 0.10	Morocco	- 0.07	Venezuela	- 1.30
Fiji	- 0.05	Nicaragua	- 0.05	Viet-Nam	- 0.05
Gabon	- 0.05	Niger	- 0.05	Yemen Arab Republic	- 0.11
Ghana	- 0.05	Nigeria	- 1.55	Yugoslavia	- 0.23
Guatemala	- 0.05	Oman	- 0.51	Zaire	- 0.38
Guinea	- 0.05	Pakistan	- 0.32	Zambia	- 0.11
Haiti	- 0.19	Panama	- 0.05		32.11%
		Papua New Guinea	- 0.05		

FIGURE 3

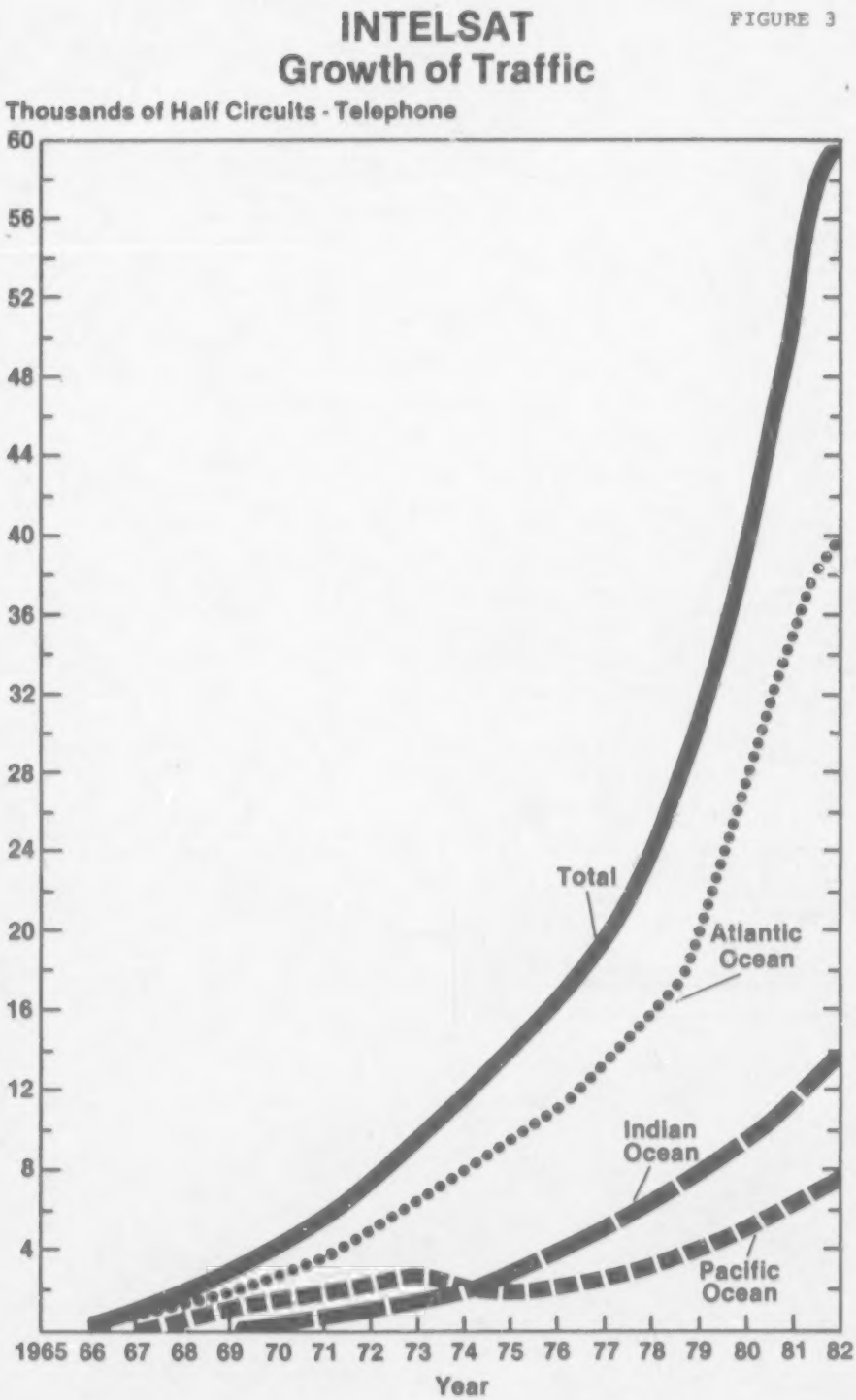

INTELSAT
Growth of Traffic
Thousands of Half Circuits - Telephone
60
56
52
48
44
40
36
32
28
24
20
16
12
8
4
Total
Atlantic Ocean
Indian Ocean
Pacific Ocean
1965 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82
Year

FIGURE 4

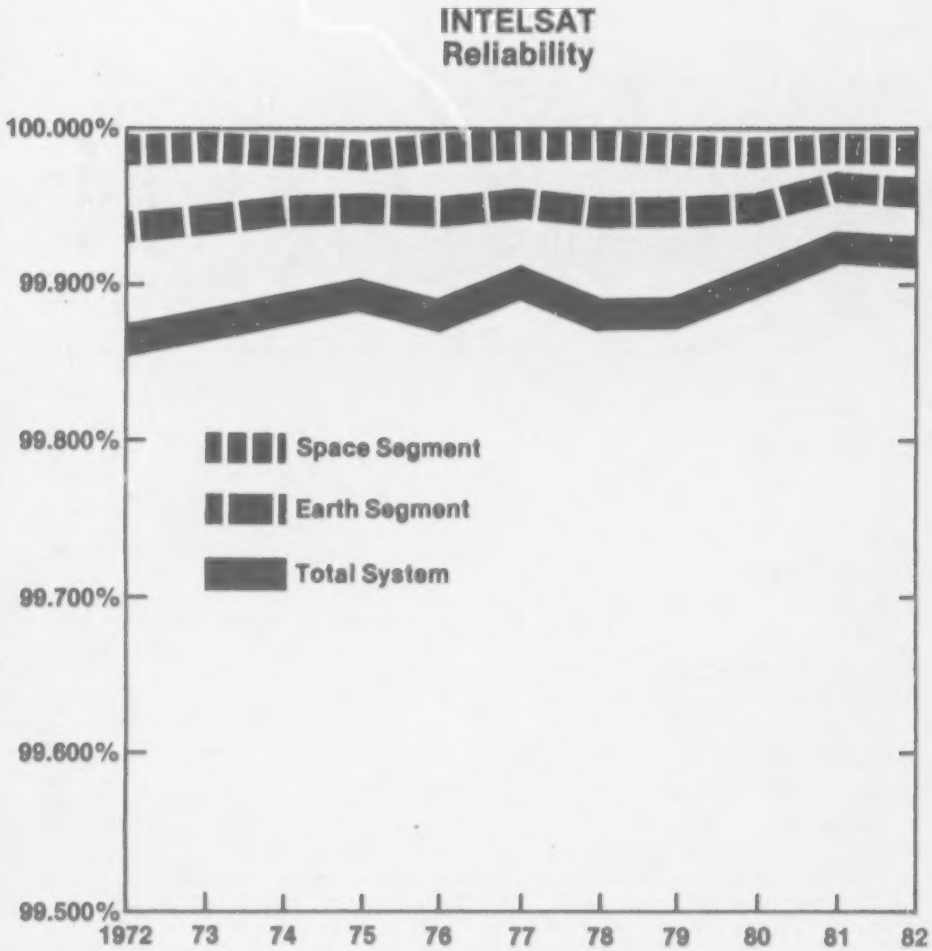
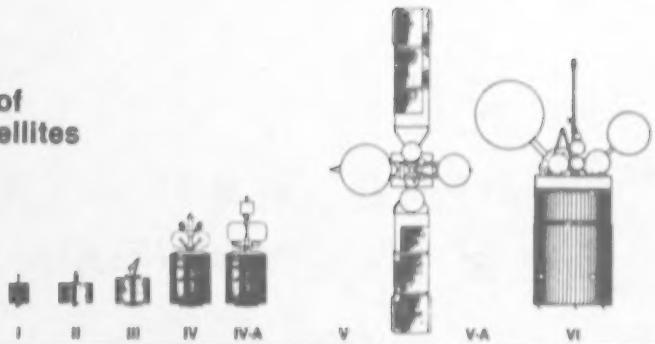

INTELSAT
Reliability
100.000%
99.900%
99.800%
99.700%
99.600%
99.500%
Space Segment
Earth Segment
Total System
1972
73
74
75
76
77
78
79
80
81
82

FIGURE 5

Evolution of INTELSAT Satellites

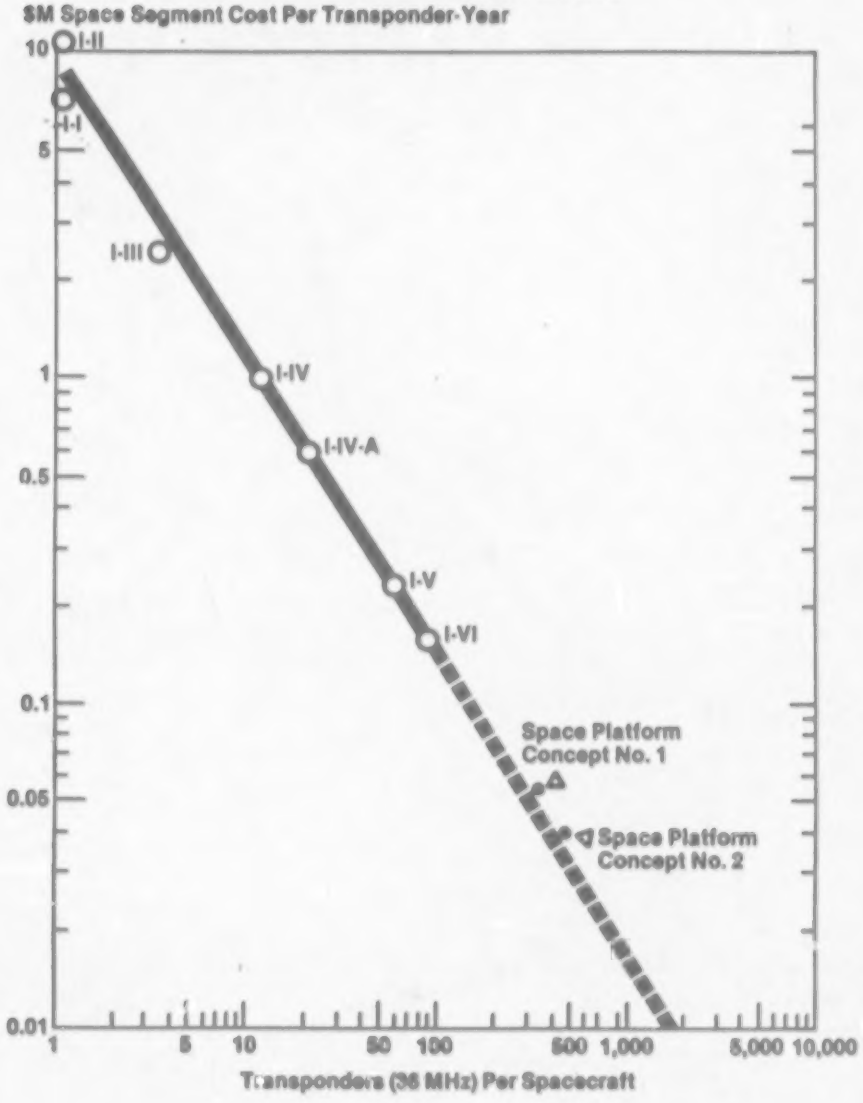


INTELSAT Designation	I	II	III	IV	IV-A	V	V-A	VI
Year of First Launch	1965	1966	1968	1971	1975	1980	1983	1986
Prime Contractor	Hughes	Hughes	TRW	Hughes	Hughes	Ford Aerospace	Ford Aerospace	Hughes
Dimensions (Undeployed)								
Width, m.	0.7	1.4	1.4	2.4	2.4	2.0	2.0	2.0
Height, m.	0.6	0.7	1.0	5.3	6.8	6.4	6.4	6.4
Launch Vehicles	Thor Delta			Atlas Centaur		Atlas Centaur, or Ariane 1-3		STS or Titan 34D Ariane 4 or Atlas Centaur Upgrade
Spacecraft Transfer								
Orbit Mass, Kg.	68	182	293	1,386	1,469	1,948	2,140	12,100/3,720
Communications								
Payload Mass, Kg.	13	36	58	185	190	235	280	800
Power EOL Equinox, Watts	40	75	134	480	800	1,270	1,270	2,200
Design Lifetime, Years	1.5	3	5	7	7	7	7	10
Rated Voice Channel								
Capacity in AOR	480	480	2,400	8,000	12,000	25,000	30,000	80,000
Bandwidth, MHz.	50	130	300	500	800	2,300	2,160	3,680

BEST COPY AVAILABLE

FIGURE 6

INTELSAT Satellites
Technical Economies of Scale



INTELSAT Charges vs CPI

FIGURE 7

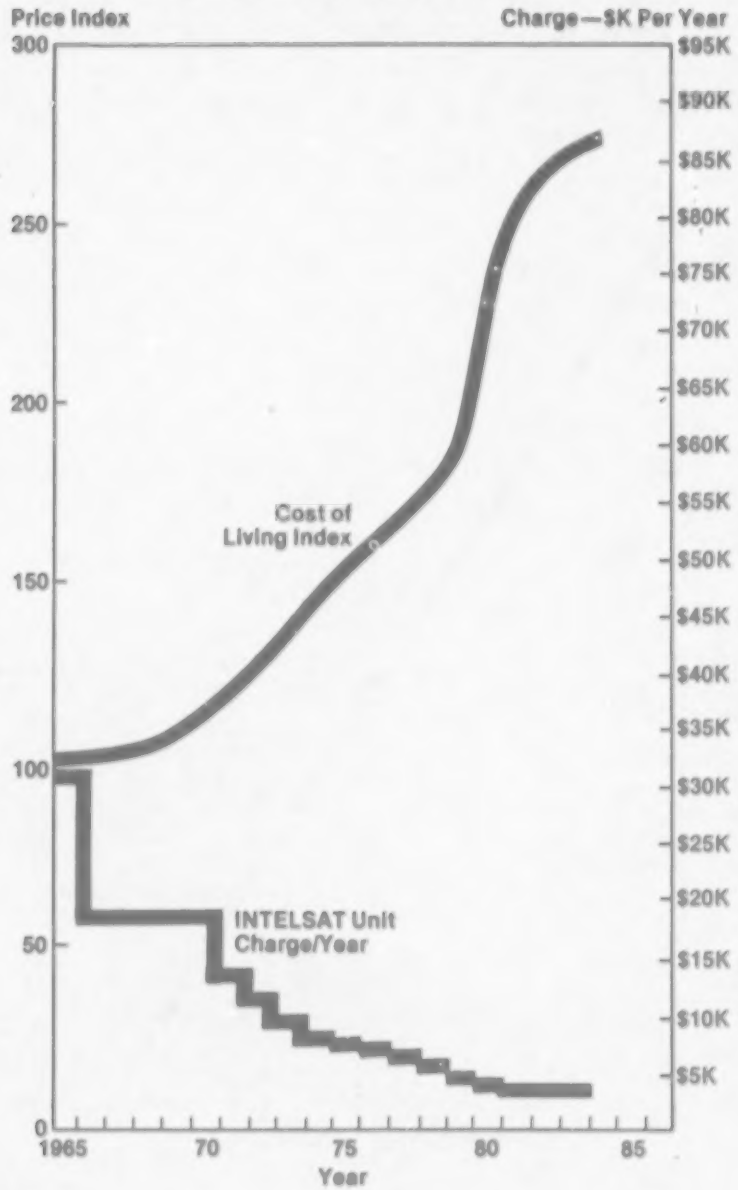
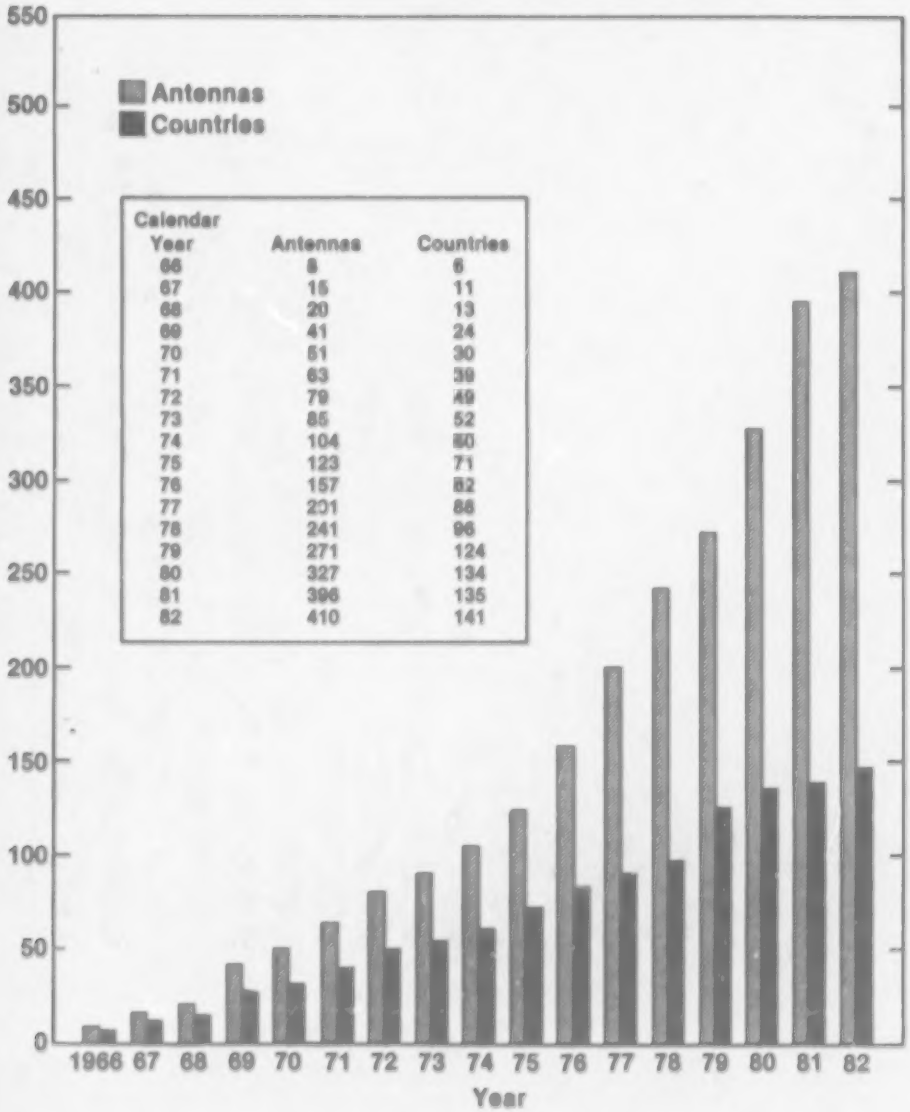


FIGURE 8

INTELSAT
Antennas in Operation



Calendar Year	Antennas	Countries
66	8	6
67	15	11
68	20	13
69	41	24
70	51	30
71	63	39
72	79	49
73	85	52
74	104	60
75	123	71
76	157	82
77	201	88
78	241	96
79	271	124
80	327	134
81	396	135
82	410	141

FIGURE 9

INTELSAT
Countries & Territories Served

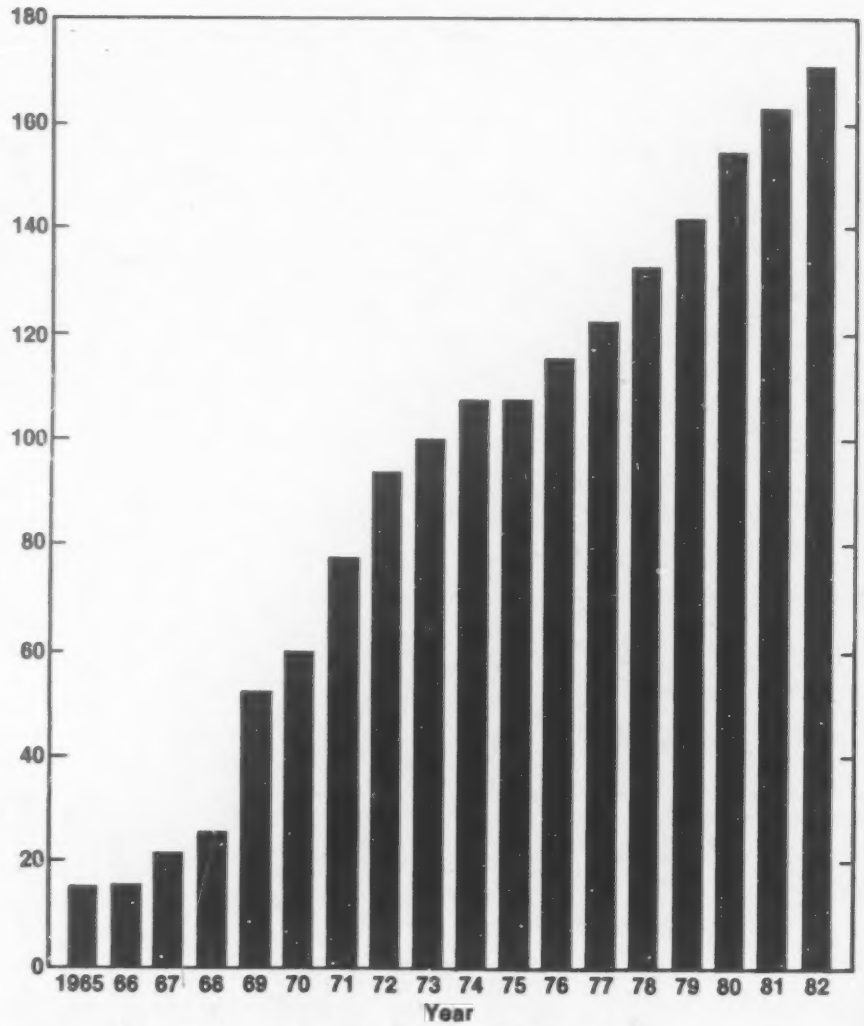


FIGURE 10

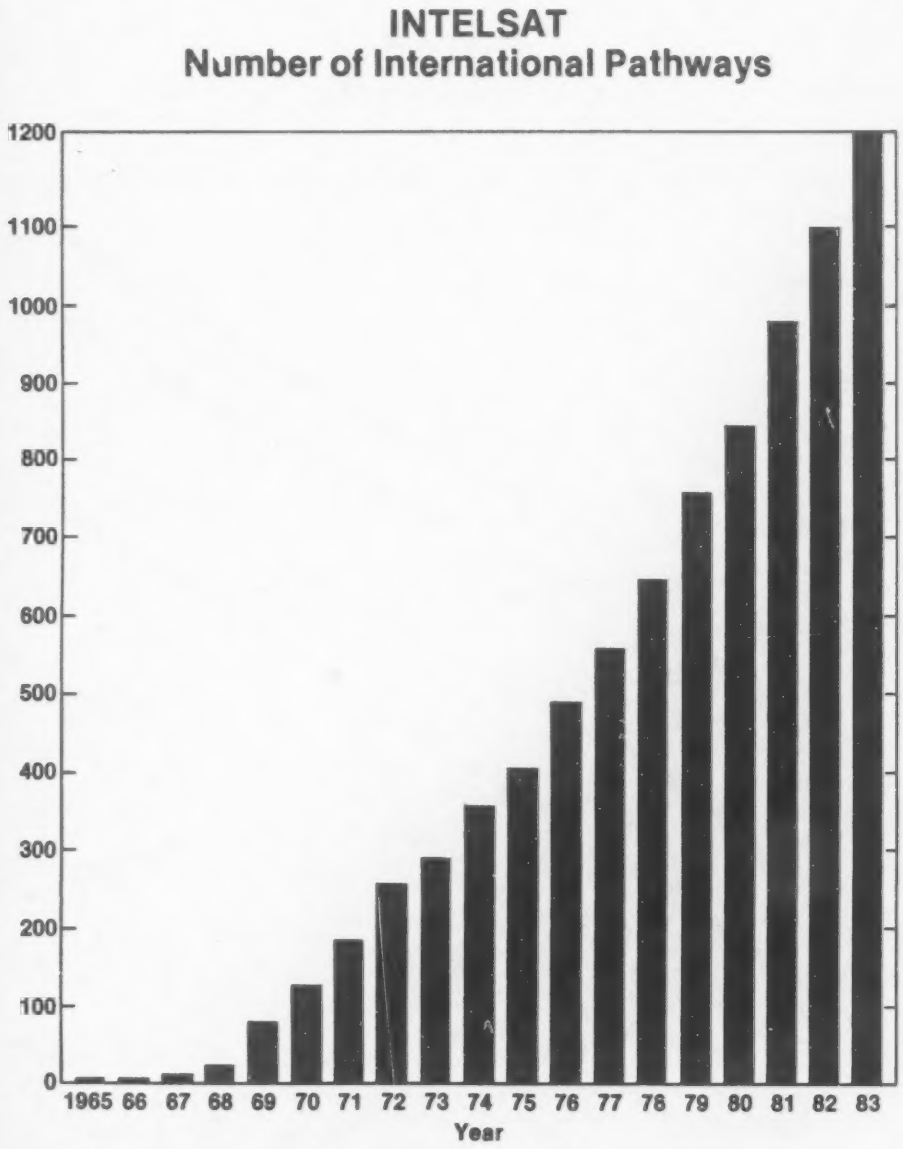

INTELSAT
Number of International Pathways
1200
1100
1000
900
800
700
600
500
400
300
200
100
0
1965 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83
Year

FIGURE 11

INTELSAT
Long Range Traffic Forecast

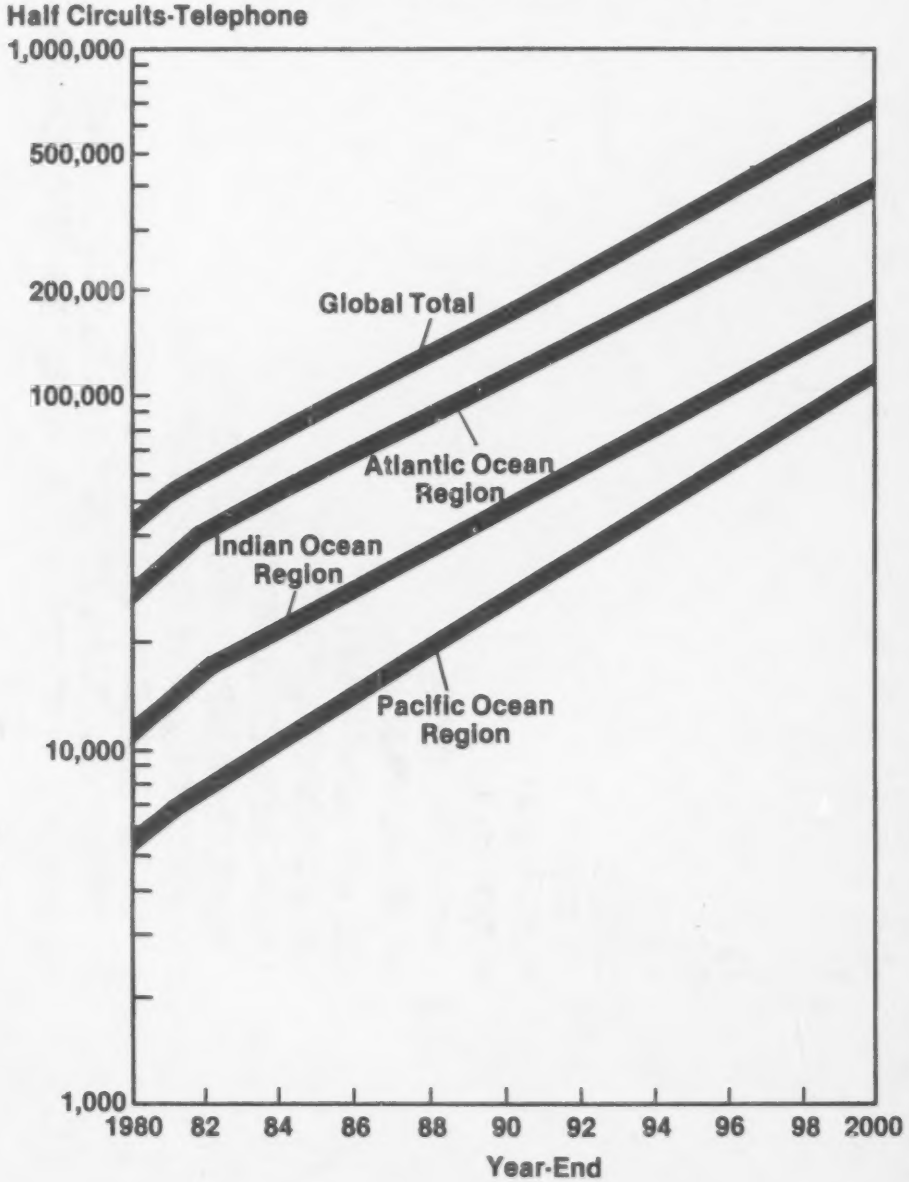


FIGURE 12

INTELSAT
Leased International TV
Service (1982-95)

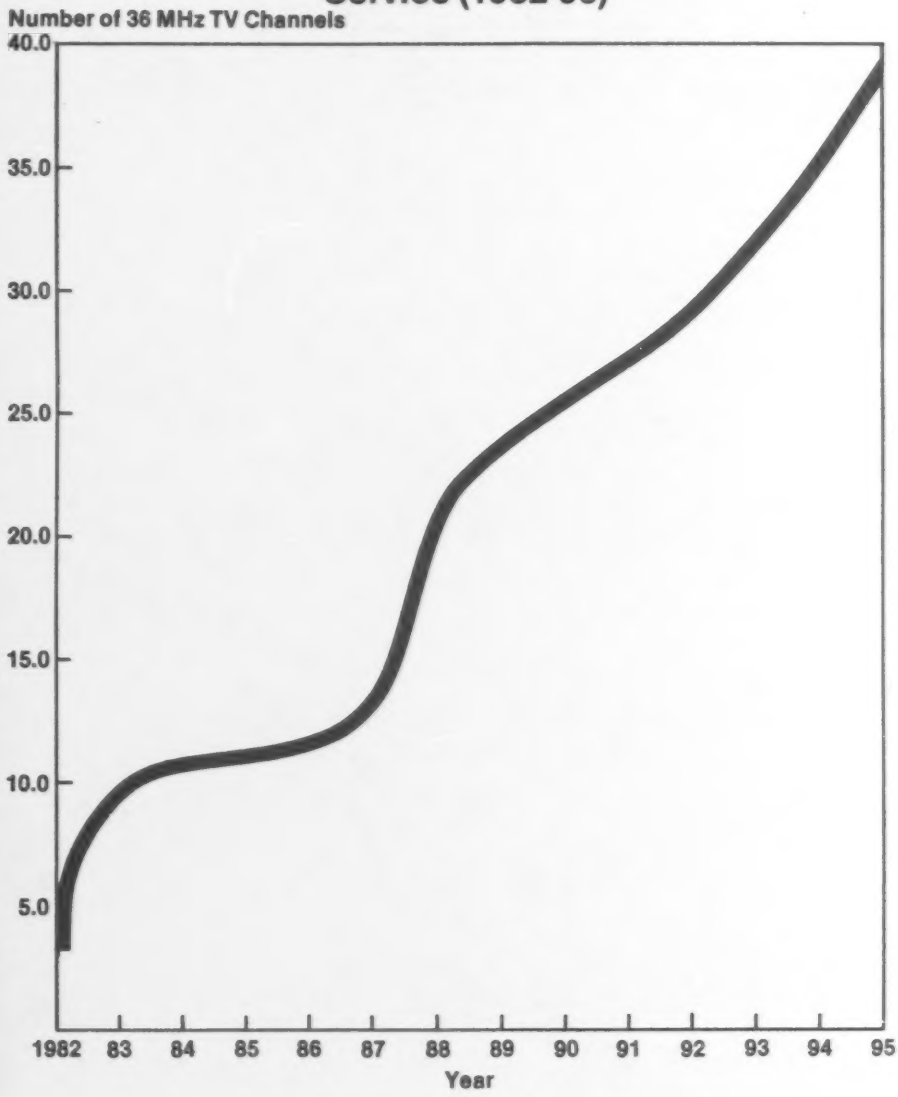
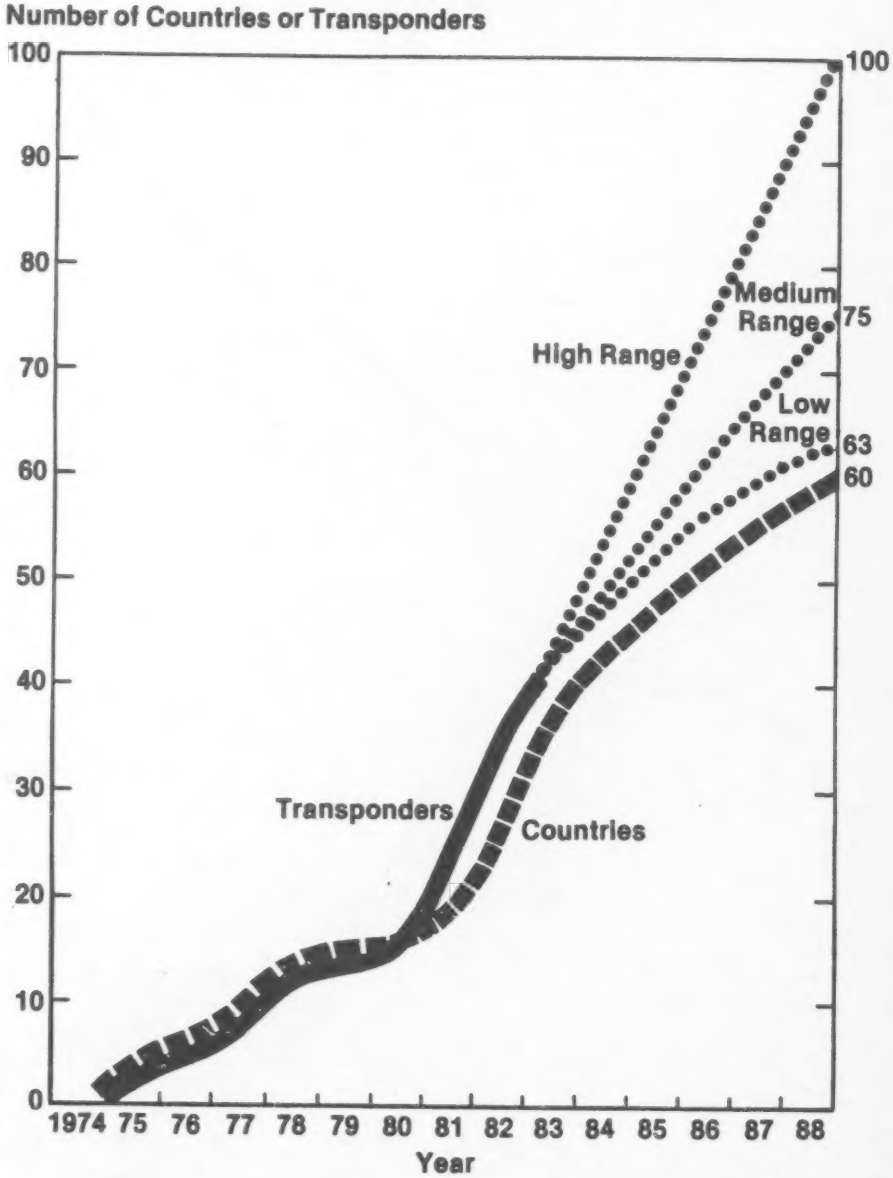


FIGURE 13

INTELSAT
Leased Domestic Service



ATTACHMENT No. 1

INTERNATIONAL TELECOMMUNICATIONS SATELLITE ORGANIZATION,
April 5, 1983.

Hon. KENNETH W. DAM,
Deputy Secretary of State, Department of State, Washington, D.C.

DEAR MR. DAM: I am writing this letter to draw the attention of the United States Government as a Party to the INTELSAT Agreement to a recent development in the United States which could have far reaching consequences for the provision of international telecommunications satellite services throughout the world.

My concern is prompted by an application submitted to the Federal Communications Commission on 11 March 1983 by Orion Satellite Corporation for authority to construct and operate an international communications satellite system linking the U.S. and Europe, and which would provide services that INTELSAT already provides or plans to provide.

Orion's application challenges the fundamental underpinnings of the INTELSAT Agreement and puts to a test the U.S. Government's will to continue to support the existence of a single global commercial satellite system. The manner in which these basic issues will be resolved in the United States will predetermine to a considerable extent the global framework for the provision of all public international telecommunications traffic.

As you know, the INTELSAT Agreements, which entered into force in 1973, were the result of complex, protracted and controversial negotiations extending over a three year period. The Agreements reflect a very carefully balanced compromise between widely different approaches on many interrelated issues. One of the most critical of these issues is the relationship between INTELSAT and other emerging satellite systems intending to carry public international telecommunications traffic. This compromise, reflected in the Preamble to the INTELSAT Agreement, commits the Parties to "the aim of achieving a single global commercial telecommunications satellite system." INTELSAT was intended to be the provider of a worldwide public service to which all nations, members and non-members alike, would have non-discriminatory access. The clear intent was to gain the varied benefits of a single system, and to avoid the proliferation of other satellite systems, except to the limited extent that the requirements of Article XIV of the INTELSAT Agreement could be met.

The United States Government was the main proponent and, through successive Administrations since 1962, has been a key supporter of the basic concept of the single global system. Indeed, it has been a major U.S. Foreign policy achievement, and one that is widely recognized throughout the world, that the U.S. chose to place international satellite communications under this cooperative arrangement, rather than developing in a unilateral way the then-exclusive technology. This cooperative effort has grown to 109 member countries, and constitutes for the developing countries the primary means, and in many cases the exclusive means, by which they communicate with the rest of the world. Thus, the question is not whether an established system should be protected against competition, but rather whether this major international cooperative effort should be needlessly jeopardized.

The viability of the single global system is at stake. Orion's proposal is most probably the first in a series of similar ones to be proposed in the U.S. and other industrialized nations. Favorable consideration by the U.S. in this case would open the door to the proliferation of other U.S. satellite systems intending to carry public international telecommunications traffic in direct competition with INTELSAT. Moreover, if the U.S. Government were to permit such a system for transatlantic or other heavy traffic routes, other INTELSAT members would undoubtedly seek to do so as well. The long-term result would surely be the emasculation of the single global system and its reduction to a thin route system.

All the basic commercial, financial and technical principles of the INTELSAT system derive from the concept of the single global system: systems planning on the basis of worldwide traffic forecasts, achieving the advantages of economies of scale, rate averaging to allow all users affordable access, etc. INTELSAT's long-term plans for the acquisition of satellites and other facilities have been established on the basis of projected levels of traffic which, of course, include transatlantic traffic as a primary component. INTELSAT plans for the INTELSAT V, V-A and VI generation of satellites were adopted to ensure reliable international communications at least cost. INTELSAT's financial plans, including contributions from its members were developed and are now being implemented on the basis of achieving these economies, particularly in the Atlantic Ocean region. To fragment the transatlantic traffic by introducing additional separate facilities would not appear to serve either

the interests of international comity or those of the using public. Over two and a quarter billion dollars (US) is being invested in these systems, and the viability of this investment for the more than 100 countries involved rests to a very great extent on the transatlantic traffic. That traffic, between U.S./Canada and Europe, comprises approximately 25 percent of the total full-time traffic carried worldwide on the INTELSAT system and is by far our biggest single stream.

The establishment of transatlantic systems such as Orion would entail serious financial consequences for INTELSAT members and non-member users alike. If transatlantic traffic were diverted from the INTELSAT system, INTELSAT's revenues would decrease while its capital costs would remain the same. As a consequence, the rate-average system which characterizes INTELSAT would be directly affected, and rates would have to increase, not only for users in the United States, but also for users in all other parts of the world. The international repercussions of a worldwide rate increase could be considerable, and are likely to be felt even more intensely in the Third World countries which comprise more than two-thirds of INTELSAT's 109 members.

United States authorities have found that in certain exceptional and well-defined circumstances U.S. domestic systems may be utilized to carry transborder traffic provided that the requirements of Article XIV(d) of the INTELSAT Agreement are met. However, Orion's proposal is of a completely different nature: it is not proposing international service to nearby countries as an incidental and minor adjunct to domestic service, but rather is proposing a purely intercontinental heavy route system for services which have been, are and can continue to be, provided economically and practically by the INTELSAT global system.

The arguments put forward to justify a separate transatlantic statellite system as being complementary to the INTELSAT system are fundamentally erroneous and betray a basic misconception of the nature and purposes of our system.

The assumption that INTELSAT's offerings are not, and cannot, meet the specific needs of users is simply incorrect. All of INTELSAT's service offerings respond to specific telecommunications requirements of its users or potential users. The range and scope of INTELSAT's services are also under continuous review and development. Examples of this are the international leased TV channel service, on a long-term and short-term basis, and the planned INTELSAT business services. Under the international leased TV channel service, a relatively large number of international television distribution networks have recently been introduced between the U.S.A. and other countries. The INTELSAT business services, which have been under consideration for more than a year and which will be introduced shortly, will provide data communication facilities operated over a wide range of data transmission rates to permit integrated digital communication services to be established internationally. This service will be introduced in the Atlantic Ocean region initially because of the predominance of the demand in this region and will subsequently be extended throughout the global network of INTELSAT.

To further justify a separate system, it has also been argued that if such a system sells transponders or leases them over the life of the satellite, customers will be able to make tailored and flexible arrangements not possible under the regimen of an international tariffed service offering, benefits that are now available to domestic communications users but not to international users. This argument also is incorrect. INTELSAT makes capacity available to its customers on both short-term and long-term bases, and the concept of bulk capacity rather than an individual circuit basis of charge, with the object of enabling users to tailor their particular requirements, is very much in mind for the business services which INTELSAT is introducing. Moreover, INTELSAT can and does approve provision of capacity sufficiently in advance so as to permit its customers to plan their services ahead of time, with maximum flexibility and with assurances with respect to supply and cost and continuity.

It is fundamentally wrong to assert that the INTELSAT system is necessarily geared to public offerings and that private facilities will provide a vital complement. In fact, private dedicated facilities are essential parts of existing public telecommunications networks, including INTELSAT's. Such private facilities are very much a part of the overall INTELSAT network in many member nations. Moreover, the proposed Orion services are no different then the normal public telecommunications services INTELSAT now provides, and cannot be regarded as "specialized services" under our Agreements; that term refers, by contrast, to such things as radio navigation, meteorological and other services.

In sum, proposals such as Orion's will not complement INTELSAT's but, quite to the contrary, will enter into direct and destructive competition with INTELSAT's

service offerings, and will impair INTELSAT's overall ability to continue to provide the wide range of services required by its users on a world wide basis.

It should be emphasized that the extent to which the INTELSAT system may be used for private facilities, like all issues involving relationships between each Party and its Signatory or others within its jurisdiction, is a purely domestic question in each particular country. Within the framework of the INTELSAT Agreements each Party or Signatory may make internal arrangements for the distribution of INTELSAT capacity in any manner it chooses, involving any degree of competition in the provision of service to end users which if considered to be in its national interest. Consequently, if a Party or Signatory sees the need for private facilities for international traffic or for additional competition in the provision of service, it can adjust its internal policies regarding the use of the INTELSAT system to meet those needs. No new international facilities are required.

I trust that the comments above will be of help in the United States Government's consideration of this important matter.

Sincerely,

SANTIAGO ASTRAIN,
Director General.

The meeting of signatories unanimously decided to adopt the resolution set forth in document MS-13-16 as follows:

RESOLUTION

In connection with its consideration of the future programs of INTELSAT, including the estimated financial implications of such programs, the meeting of signatories noted the Director General's letter to the United States Government as a Party to the INTELSAT Agreement on the issue raised by the proposal from a U.S. corporation to construct and operate an international communications satellite system linking the United States and Europe.

The meeting of signatories decided to endorse the concerns expressed by the Director General in his letter that the proposal challenges the underlying purposes for the proposal challenges the underlying purposes for which INTELSAT was created and that the establishment of one or more competitive satellite systems diverting international transoceanic or other heavy route traffic from the INTELSAT system would have a fundamental impact on the viability of the single global commercial telecommunications satellite system, and would entail serious financial consequences for all INTELSAT users.

The meeting of signatories decided to request the Director General to convey the concerns of the Meeting of Signatories to the United States Party, and to the Board of Governors, all other INTELSAT Parties, and the Assembly of Parties for their consideration.

Senator GOLDWATER. Thank you, Mr. Astrain. We appreciate your comments very much.

And now we will hear from Mr. Christopher Vizas, executive vice president, Orion Satellite Corp.

Mr. Vizas, you may read your entire statement, or summerize it. Proceed as you care.

Mr. VIZAS. Mr. Chairman, I am going to, particularly because of some of the comments made this morning, depart from my prepared text, and I ask that it be made a part of the permanent record.

I would like to thank you and the subcommittee for the opportunity to appear today and express the views of Orion Satellite Corp. on S. 999. Accompanying me, in case there are specific questions about the regulatory posture of the corporation or the technical configuration of our system, which I would suggest, in deference to Mr. Astrain and Mr. Charyk, takes advantage of existing technologies to conserve the orbital arc better than anyone else prior to our proposal, are Tom Keller, Counsel to Orion, who is a partner in Verner, Liipfert, Bernard & McPherson, and Walter Morgan, senior communications consultant at the Communications Center

of Clarksburg and former senior staff scientist at Comsat Labs, who directs the engineering for Orion Satellite Corp.

I would like to briefly outline what Orion is about, why we support S. 999, what the benefits of Orion are, and what the misunderstandings of the Orion proposal that we have seen reflected again here today are.

Orion proposes to build three communications satellites, put two in orbit, sell the transponders on those satellites, then keep the power on. That, in a nutshell, is what the corporation intends to do. We are not a common carrier. Like a number of domestic communications facilities from high frequency radio to microwave to satellite, the Orion satellites will be private, user-owned facilities, not public telecommunications facilities.

Because of our experiences in developing the company and proposing our system Orion strongly endorses the goals of S. 999. As we have ploughed some new ground over the past few months, we find procedural and jurisdictional impediments that need not exist interferring in the process that Orion is trying to pursue with the FCC and elsewhere in the U.S. Government. We have also found an aggressive misunderstanding of our proposal, of the Communications Satellite Act of 1962, and of other provisions of U.S. law; that usually unnecessary misunderstanding promotes confusion and delay in the process of Orion being able to start its enterprise.

To the extent that S. 999 clarifies the structure of the U.S. Government, removes procedural impediments and delays, and clarifies the current law of the United States, in particular the intent of section 102(d) of the Satellite Act, we firmly support it.

Let me return to the issue of misunderstanding. Orion will be a private facility as opposed to a public one, a distinction clearly recognized in U.S. law for over three decades. As such, we will fit into a niche in the international satellite regulatory structure which is recognized in the Communications Satellite Act of 1962, the recommendations of the International Telecommunications Union, and the operating agreements of the Intelsat organization.

As our recent filings with the Federal Communications Commission describe more fully, it is also a niche recognized by the U.S. Senate quite explicitly when it passed the Satellite Act in 1962. The details of the regulatory structure, the provisions we are talking about, are explained fully in our filings at the FCC which have been supplied to subcommittee counsel.

Yet, in spite of the structure of existing law, we find Mr. Charyk and Comsat suggesting that Orion's proposal, if accepted, would violate what Mr. Charyk characterizes as "the stringent standards" of section 102(d) of the Satellite Act, and that the intent of this legislation to clarify section 102(d) would be a major change in U.S. policy.

It strikes me that Mr. Charyk and Comsat are still trying to fight the battle that they have lost consistently over the last decade: the battle over how to interpret the national interest standard in section 102(d) of the Satellite Act. The national interest standard was read broadly by the FCC, as Congress intended, in the early 1970's, and Comsat was not permitted to monopolize domestic satellite communications which they at that time sought to

do. At several subsequent junctures, the FCC has continued to read the standard broadly.

I think that the parallels between those lessons of history and today are clear.

Intelsat's misunderstanding of Orion's proposal is somewhat more puzzling to me. Intelsat is an organization without experience and expertise in U.S. law and policy. It is in essence not a regulatory organization, not a creature that is used to interpreting laws. It is an operating company to all intents and purposes, albeit a consortium of a number of organizations from a variety of nations around the world.

Intelsat operates as a carrier's carrier, and if they should seek to speak to U.S. law and policy and to the regulatory structure within which they exist, both under U.S. law and policy and under international law and policy, they should learn the lesson of that international regulatory structure and of the U.S. communications law and history which in critical part, as Mr. Astrain pointed out, underlies it in the form of the Communication Satellite Act of 1962.

For over 30 years, private facilities, first in high frequency radio, then in microwave, most recently in satellites, have complemented the private offerings of common carriers. Private facilities have never caused a decrease in overall public carrier traffic and have almost always generated more traffic for everyone.

Mr. Charyk and Comsat's rhetoric and its echoes in Intelsat statements are highly reminiscent of the U.S. carriers' statements in the 1950's, warnings of iminent disaster, danger to thin routes. I think we are all aware that those warnings were never borne out, that those disasters never occurred. Unfortunately, the mistaken rhetoric of Comsat and Intelsat are more disturbing and destructive to Orion and U.S. policy than the carping of the U.S. carriers in the 1950's was to those who wanted to develop private microwave systems.

Comsat is the U.S. representative to Intelsat. Its violent opposition, publicly expressed on several occasions and again here today, and mischaracterization of Orion's proposal is bound to unfairly color the opinion of other signatories to Intelsat, the nations around the world. Comsat's opposition has unfortunately led Intelsat to the same misunderstanding of Orion's proposal, into misunderstandings which are highly unfortunate because Orion truly is a complement to the Intelsat system.

Finally, and perhaps most important, the rhetoric, the statements and the position of Comsat, and unfortunately Intelsat, divert attention from the real focus of international telecommunications needs and of this legislation. That focus, of course, is that communications technology is the servant, not the master. Telecommuncations is important to support an infrastructure for far more important economic and societal activity, from support for older industries in such areas as computer assisted design and computer assisted manufacturing, to support for new services and products such as video imaging and transaction networks.

This importance of telecommunications as the backbone for other economic activity is clearly recognized, both formally and informally, by most of the nations of the industrialized and developing world. In particular, we have seen the public statements and posi-

tions of the Japanese, the British, the French, the Germans, and more recently and more important perhaps to the deliberations of this committee, the European Community.

As my prepared text more fully explores, all of these nations and regional organizations have begun to launch new initiatives in both domestic and international telecommunications such as, for example, international and intercontinental satellite services and facilities which in many respects, both on a price basis and in other terms, would be far more competitive with the Intelsat system than what Orion proposes.

Some of the rhetoric we have heard today from Mr. Charyk and Mr. Astrain would appear to ignore the fact that telecommunications should be designed for those who need and use it, that it is a means, not an end, and that the most efficient, effective and lowest cost facilities should be available.

Happily, this subcommittee recognizes the importance of telecommunications. That recognition is refleted in S. 999, and, as I said earlier, Orion Satellite Corp. strongly endorses the goals and objectives of S. 999. If there is anything that we can do to help the subcommittee in its deliberations, we would be happy to.

Thank you.

[The statement follows:]

STATEMENT OF CHRISTOPHER J. VIZAS II, EXECUTIVE VICE PRESIDENT, ON S. 999

Mr. Chairman, we would like to thank you and the other members of the Subcommittee for the opportunity to appear today to express the views of the Orion Satellite Corporation on S. 999.

Orion supports the basic premises of S. 999. We endorse the continuing extension of the benefits of diversity and choice for consumers in telecommunications technology and services to the international marketplace. The United States has always taken the lead in fostering such development and should continue to do so. We also believe that the legislation accurately reflects the political realities and economic needs of the international communications marketplace.

Before exploring more fully the basis and the importance of S. 999, permit me briefly to describe Orion Satellite Corporation and address the provisions of S. 999 in which our company has a specific interest. Bear with me if my description of Orion seems a bit longer than is customary when a company testifies. The scope and nature of Orion's proposal appears to have been misunderstood by some; and I believe it important that the Subcommittee's record be accurate and clear.

Orion was founded last year with the objective of creating private, user-owner international telecommunications satellite facilities. After extensive development work, Orion applied on March 11 of this year to the Federal Communications Commission for authroity to build, launch and operate three satellites for communications between North America and Europe. The system will not be used to provide common carrier services; instead, transponder capacity will be owned by the users of the facility. We believe that a grant of our application will bring to the international communications arena the same benefits and advantages of private, user-owner communications facilities which domestically, the Federal Communications Comission has found to be in the public interest. In effect, Orion's objective is to create a private, user-owned international telecommunications satellite facility that will complement the INTELSAT system. Orion will provide private facilities for private use; INTELSAT provides commercial public telecommunications services. Orion's satellites will be user owned. Capacity will be used by transponder owners to meet their own, often unique, communications needs.

The basic intention is to respond to the need for diversity and flexibility in meeting the increasingly sophisticated demands of high volume broadband users of international telecommunications. Orion will create cost effective, tailored facilities necessary to support a wide range of economic activities.

Orion Satellite Corporation is owned by a U.S. based investor group, but it has substantial financial support from both the United States and Europe. In other words, while operating under U.S. leadership, Orion is international in scope. Orion

recognizes that operation in the international marketplace demands that an enterprise must be international in scope and character. The construction and launch of the Orion facilities will include manufacturers and vendors on both sides of the Atlantic. Perhaps most important, Orion, as developer and manager of the facility, will actually be selling the satellite transpondes to users. What that means, in simple terms, is that enterprises in the United States and Europe will have full ownership and control of their own transponders to meet their unique operational requirements. Such control is increasingly important to businesses on both sides of the Atlantic. As telecommunications becomes ever more critical to their operations and competitiveness, they can settle for nothing less than the most effective and efficient facilities and services.

As I mentioned at the outset, Orion's proposal appears to have been misunderstood in some quarters. Some have characterized Orion's proposal as involving a major change in communications policy. We feel it does not. As we explained initially in our application to the FCC and more recently in our filings in response to Comsat and two other carriers who opposed our application, our proposal does no more than acknowledge the basic distinction between facilities that are privately owned and used for private purposes and those that are used to provide common carrier services. Copies of the complete Orion docket at the FCC have been provided to the Subcommittee staff.

Turning to the specific provisions of S. 999 as they would appear to affect Orion, Section 304(a) of Title III of the bill would amend Section 102(d) of the Communications Satellite Act of 1962. Section 102(d) expresses the intent of Congress that the 1962 Satellite Act does not preclude the creation of domestic and international communications satellite systems in addition to the INTELSAT system, if such additional systems are "required to meet unique governmental needs" or if they are "otherwise required in the national interest." S. 999 would embellish the present criteria for the creation of new satellite systems by permitting their establishment if they will "otherwise serve the public interest, convenience and necessity."

In our view, this additional language does not create a new standard for the authorization of non-INTELSAT communications satellite systems. Instead, we see the amendment simply augmenting and clarifying the "national interest" standard already embodied in Section 102(d). The Federal Communications Commission has invoked that national interest standard to justify the authorization of non-INTELSAT systems for the provision of domestic communications satellite services in the United States, and the use of non-INTELSAT systems for the provision of international communications satellite services between the U.S., offshore points, and points in Canada and Mexico. In accordance with those precedents, we feel that the existing language of Section 102(d) is sufficient to enable the Federal Communications Commission to continue to authorize the estblishment of non-INTELSAT systems, including privately-owned international satellite systems such as Orion's. Nevertheless, to the extent the proposed language of S. 999 would underscore the FCC's existing authority in this area, we support its enactment into law.

Addressing S. 999 in a somewhat broader context, the changing face of international communications, particularly the speed of technological development and the explosion in user needs throughout the world, compels an increasingly sophisticated approach by governments to the structure and regulation of international communications. In particular, there is a growing need for the sort of diversity and alternatives in comunications facilities and services that have benefited users in the United States. International users need, and deserve, the design flexibility and long term price and supply assurances that will result from diversity.

Governments throughout the world increasingly recognize that the industries dependent on telecommunications demand the best possible facilities, often facilities which are uniquely structured for a particular industry or enterprise. Sometimes, even national telecommunications administrations recognize these realities. Telecommunications is the backbone and nervous system of much new economic development; without the most adaptable, reliable, and cost effective facilities, the far ranging benefits of new economic development will not be realized. Telecommunications is the vital element in global applications of computer-assisted design and manufacturing which helps maintain the competitiveness of established industries; it is the irreplaceable delivery system for a wide array of new entertainment, financial and business services. Indeed, telecommunications and the other information technologies provide the basis for creating new jobs and preserving old ones, and Japan, Europe and much of the rest of the world recognize this. This developing recognition of the need for diversity in facilities and services is beginning to lead to pressures to develop alternatives.

The Japanese approach the development of what they call the "knowledge-intensive industries," in which telecommunications is a cornerstone, from the perspective of economic development. Japan has pursued a national economic policy recognizing the importance of information in shaping its society from as early as 1970, and the Ministry of International Trade and Industry (MITI) recently issued a national economic policy report reemphaasizing the role of information technology in determining the future of Japanese society. The Japanese understanding of the "knowledge-intensive industries" includes not only the actual provision of telecommunications and information processing goods and services, but also those services which grow out of the use of telecommunications and information processing. Through such mechanisms as the strengthening of "knowledge-intensive technologies" and the support for such large-scale technologies as "telecommunications," the Japanese feel they can "form the basis for long-term economic progress."

Most major European governments, particularly France, Germany, and the United Kingdom, as well as the Commission of the European Communities, have concluded, formally or informally, that the industries dependent on telecommunications and data processing will be the focus of economic growth in the next decade: from financial services, to support services for older industries (such as computer assisted design and manufacturing), to a wide variety of data processing services, to video entertainment and educational programming. Concern with the "knowledge-intensive industries" is reflected in the studies of the European Commission on "harmonization" of telecommunications, the French Nora-Minc and Madec reports, the establishment of the new British Minister of Information Technologies, and a variety of West German studies. Telecommunications is the backbone and nervous system of this new economic development, runs the theory, and old patterns in the delivery of communications facilities and services must be broken. The Commission of the European Community, for example, recently took a first, and major, step in opening up the European market in communications services. In effect, the Commission applied the competition provisions of the Treaty of Rome to a considerable portion of the European communications market, at least the market in communications services between European nations. Recent Japanese proposals for a new Pacific basin satellite communications system, the British UNISAT proposal for alternative transatlantic communications facilities, and other international initatives, all underscore the accelerating shift in attitudes and initiatives in international communications.

Recent developments within domestic markets in foreign nations also illustrate the spreading conviction among governments that the best possible communications technology and services need to be provided to support other economic activity; and, that the encouragement of alternatives and diversity in the delivery of technology and services is the only effective way to ensure that they are indeed the best possible. Developments in the United Kindom and Japan reflect most visibly the emerging conviction that diversity is the cornerstone of the best possible telecommunications. Indeed, in some areas developments in both of those countries go a few steps beyond recent parallel developments in the United States.

These parallel developments in international and domestic policies highlight the clear distinction between international and domestic communications markets. Within its own borders a nation can choose to follow virtually any path to assure that the telecommunications needs of its citizens and its industries are met: Each national system is different from those of other nations. For example, the pattern of private ownership and increasing competition in the United States can be distinguished from the developing pattern of private ownership and increasing competition in the United Kingdom. The emerging developments in Japan can be clearly distinguished from the governmentally-held monopoly systems in other parts of Asia. At the same time, even national monopolies have critical distinctions between them. For example, Spain has a privately owned national operating company which functions in a distinctly different manner than the government-controlled PTT of tis neighbor, France.

Just as no two national systems are alike, there being an enormous range among them, so the international market is different from any particular national market. With the rapid growth in international demand and the continuing revoulution in technology, international communications is a ripe market in which to measure the true benefits of diversity and alternatives without threatening any particular national system. Indeed, it makes a great deal of sense to foster the opening of the international market at this time. While it may not be that the full reach of United States' competitive policies, particularly in the public telecommunications area, should be applied internationally, it makes just as little sense that the government

monopoly pattern at the other end of the spectrum should dictate the structure of a growing and increasingly sophisticated market.

And it is the growth and sophistication of the international market upon which S. 999 is based. It is also the premise for Orion's proposal. Because telecommunications is increasingly recognized as the supporting function for other and often far more important economic activity, and because many commercial and industrial users need custom-tailored facilities and systems to support their economic activity, Orion believes that the demand for intercontinental communications technologies will expand far beyond what many people have predicted. That is why Orion exists. It is an entrpreneural venture intended to meet the need for diversity and alternatives in the international communications facilities market. While some have characterized Orion's proposal as a major change in communications policy, we feel it is not. Indeed, we think it is only a half step forward. Perhaps there should be far greater steps than ours. S. 999 would encourage those greater steps and we endorse that approach. Orion feels that diversity in facilities and services can only promote the best possible support for more important and broad-based economic activity. For these reasons, Orion Satellite Corporation supports the enactment of S. 999 into law. We would be happy to work with the Subcommittee and its staff in any way you feel we might be helpful.

Thank you.

[The following information was subsequently received for the record:]

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question. Mr. Vizas, how do you address the issues raised that Orion-type proposals would merely place an undue burden on the less trafficked routes—that these routes are today subsidized by the heavily used Atlantic traffic? What happens to that subsidy if we assume that Orion is a competing system?

Answer. First, and most important, Orion's facilities will not be a competing system. As explained in the company's filings at the F.C.C. and my testimony, Orion proposes a set of private facilities which complement the public offerings of INTELSAT. And non-public, dedicated facilities such as those proposed by Orion do not burden public facilities.

Turning to question of an INTELSAT subsidy flowing from the Atlantic, however, the available evidence that such a subsidy exists is less than compelling. Because INTELSAT's complete financial reports and information regarding its ratemaking and cost allocation methodologies are not publicly available, it is difficult, if not impossible, to evaluate fully INTELSAT's claim that less trafficked routes are subsidized by the heavily used Atlantic facilities. As shown below, however, information that is publicly available indicates that any such cross-subsidy may be minimal or non-existent.

Although INTELSAT charges its Signatories the same rate for comparable portions of satellite capacity in each of the three ocean regions (Atlantic, Indian and Pacific), this, by itself, does not mean that the Atlantic traffic subsidizes the traffic in the Indian and Pacific Ocean regions. Publicly available information from INTELSAT suggests that the uniform rates reflect the reality that INTELSAT's costs for each of the three ocean regions are proportionate to the respective traffic volume in each region.

The following table, which is dervied from INTELSAT's "System Status Report" as of February, 1983, shows the utilization of the INTELSAT system in each of the three ocean regions.

	Ocean region		
	Atlantic	Indian	Pacific
Number of satellite half-circuits used	39,658	13,403	7,320
Percent of total half-circuits used (percent)	66	22	12

Although it is readily apparent from the foregoing that the Atlantic route is far more heavily used than the Indian or Pacific Ocean routes, INTELSAT's capital investment in satellite facilities serving the Atlantic route is far greater than the other two. INTELSAT's February, 1983 report entitled "Deployment of Satellites" projects a system-wide total of thirteen satellites as of May, 1983; eight of these

(over 60 percent of the total number) are deployed for service in the Atlantic region, whereas only three satellites serve the Indian Ocean route and only two serve the Pacific route. Thus, any subsidy from the Atlantic route in favor of other routes would appear to be minimal or nonexistent. Moreover, depending on how INTELSAT's system-wide operating and capital expenditures are allocated to the various traffic routes, it is conceivable that the high volume Atlantic route generates revenues that are disproportionately lower than its properly allocable share of total costs—which is to say that the thin route users may in fact be subsidizing the heavy route users.

The foregoing assesment of INTELSAT's cross-subsidy claim takes into account only the space segment portion of the INTELSAT system. When ground segment costs are factored in, it becomes apparent that thin route users may be paying premium rates on an end-to-end per circuit basis; INTELSAT has configured its global system in a fashion that requires large, expensive earth stations to access the INTELSAT space segment. Thin route users in the Pacific and Indian Ocean regions must bear this cost burden as a threshold to employing the INTELSAT satellites irrespective of the volume of their traffic. Thin route users probably pay more on an end-to-end per circuit basis than their counterparts on the heavily trafficked Atlantic route.

In any event, the burdens should be on INTELSAT to document and substantiate its cross-subsidy claim or, at the very least, to make public its books of account and its ratemaking and cost allocation methodologies so that the claim properly may be evaluated. If INTELSAT can establish in a verifiable fashion that there is a real subsidy flowing from the Atlantic to other regions, then the United States and other Parties to INTELSAT should consider whether some accommodation might be appropriate to sustain that subsidy where alternative systems adversely affect existing traffic and revenues. Let me emphasize that any such consideration should be by the Parties to INTELSAT and not the Signatories, whose self interest in protecting the status quo may blind them to more attractive technical and economic alternatives. Indeed, the governments that are Parties to the INTELSAT Agreement should conduct any deliberations on this question outside of the customary INTELSAT structure, since the deliberations must be insulated from the possible bias of some of the operating entities that direct and influence INTELSAT's operations.

Question. What is it, Mr. Vizas, about the INTELSAT system pricing or technical arrangements that make it unattractive for the types of services you plan to provide your users?

Answer. First, as I stated in my testimony, the capacity or Orion's system will be privately owned by the users. The opportunity for private ownership of communications facilities for domestic use has existed for a long time in the United States. History shows that some users, particularly large ones with unique communications needs, prefer to purchase and operate their own facilities for certain purposes, rather than rely on the offerings of the common carriers. There are any number of reasons why such large users would prefer to do this. They may find the offerings of the carriers too expensive, incapable of meeting their unique needs, or unavailable at particular times when their need to communicate is the greatest. Orion believes that the same choice ought to be made available for international users.

With respect to the technical and pricing aspects of the INTELSAT system, earth stations cannot be located at customer premises under present conditions. The North American gateway stations to Europe are in Etam, West Virginia, Andover, Maine and Mill Village, Canada. Connections to these remote earth station locations from major business and commercial centers require additional satellite or terrestrial facilities, which not only are expensive, but also tend to degrade signal quality. Also, one of the principal advantages of statellite technology is the ability to communicate simultaneously from a single point to multiple receiving points. The INTELSAT system, both present and as planned, does not allow customers to enjoy this advantage. Finally, there are severe limitations on the availability of INTELSAT transponders that are set aside for video services, and INTELSAT has admitted that demand for INTELSAT television capacity surpasses its ability to meet it.

Question. INTELSAT will be under increasing pressure to address the issue of competing systems. Surely, the tide cannot be stemmed indefinitely. How do you see INTELSAT addressing those issues while maintaining the commitment to a global system?

Answer. As Orion demonstrated in its filings at the F.C.C., INTELSAT's mandate is to operate a global satellite network for the provision of public telecommunications services on a common carrier basis. There is no reason why INTELSAT cannot or should not continue to fulfill this mandate. Anologous domestic U.S. experience shows that the establishment of private communcations facilities does not detract

from or diminish the public networks operated by common carriers. Indeed, the availability of private facilities for private use has tended to increase the utilization of all communications facilities and services, including those provided through public networks operated by common carriers.

Going beyond the limited and comparatively easily resolve question of private facilities as a complement to INTELSAT's public offerings, the structure of international communications has matured to the point where a more sophisticated approach to INTELSAT's role, even within the existing framework, is essential. There are three key elements in international communications—ownership of facilities, operation of those facilities, and provision of services by means of those facilities (including determination of the appropriate range and type of such services). Given the nature of INTELSAT as an international consortium of sovereign nations, INTELSAT's proper monopoly role may lie simply in determining the appropriate mix of public telecommunications services that are provided by satellite and ensuring that such services are provided on an equitable basis.

From the perspective of assuring the most efficient and effective communications capacity for end users (business and otherwise), such a role promises greater benefits for all nations and their economies. Facilities ownership arrangements, as experience in the domestic U.S. market and in the INTELSAT system demonstrates, are not necessarily a key deteminant of cost effectiveness or service quality. The same is true of operation of various portions of the facilities comprising the network; proper engineering standards and technical coordination arrangements can often achieve more by way of operational efficiency than a "single hand at the switch." But assuring equity in the service offerings of the global public satellite network may well require a focal point for decisions regarding types of services and their availability; or at least, it may require a global public network "broker" who fairly and carefully evens out costs and rates to assure a functioning network to which all nations have equitable access to meet their public telecommunications needs. This is not to suggest that INTELSAT's activities in those areas should be separate and distinct from its role as coordinator of the provision of international public telecommunications services via the global satellite network.

Senator GOLDWATER. Thank you very, very much.

And now we have Mr. Richard Colino, the U.S. candidate for Director General of Intelsat.

You may proceed as you care.

Mr. COLINO. Thank you, Mr. Chairman.

I would also like to thank you for your kind words before Mr. James' confirmation hearing. I appreciate them.

Mr. Chairman, as you note, I am here in my capacity as the U.S. nominee for the position of Director General of Intelsat, and I also am here hopefully to shed some light on some 20 years of history after the passage of the Communications Satellite Act. I have submitted a fairly full text which I will depart from, Mr. Chairman, in view of the commentary today. I hope it will be part of the record.

Mr. Chairman, I submitted this text as the first witness. Your staff will tell you I got my testimony in first, and I did that not just because I am from an entrepreneurial sector of the economy, the communications consulting business, but because I wanted it to be clear that the views I expressed here were mine and mine alone. That they were in no way colored by any knowledge of any other views.

I think that is important, Mr. Chairman, because my knowledge of the Communications Satellite Act goes back to the deliberations of the U.S. Senate in 1962. I will simply say that rather than get into long legislative history arguments, no distinction was made, Mr. Chairman, between public and private telecommunications facilities. That is not an oversight. The Senate and the House were incredibly clairvoyant in predicting the future and in putting into place the social framework to exploit technology.

The possibilities that emerged in the 1970's within the U.S. domestic economic system to encourage commercial and marketplace forces to determine the nature of telecommunications facilities and services could hardly have been foreseen in 1962. Intelsat therefore was established on the basis of certain principles and certain understandings. Any effort, in my view, Mr. Chairman, to change those bases requires some effort to see to it that Intelsat is properly capable of either competing with new systems or protected from untoward intervention in the success of Intelsat to date.

The Intelsat context, Mr. Chairman, does not need any elaboration except to note once again, as other speakers have, that section 102 of the Satellite Act established a very far-reaching U.S. policy, and as Mr. Astrain and others have noted, that policy has been achieved effectively through the Intelsat system.

I disagree with those speakers who say that Intelsat is well recognized. I think one of the unfortunate situations that we encounter is that Intelsat is not adequately recognized. We hear a great deal of rhetoric about world peace and understanding, Mr. Chairman, but the fact that 109 nations provide daily service to every corner of the world, the fact that the kind of situations that Ambassador Gardner described as coming up in other international fora have been resisted in Intelsat, and in fact, have been subsumed to a greater need and responsiveness to public requirements throughout the world, I think is a story that has never been fully told and properly underscored.

The issues are not, Mr. Chairman, simply whether systems of the type described by Mr. Vizas are competitive to Intelsat or complementary to Intelsat. As someone observed during the course of the meeting of signatories in Bangkok, which I attended, how curious it is that you seldom see proposals to serve thin traffic streams. It is always for the heavy traffic routes that someone comes up with a better idea to serve those routes.

We have seen deregulation work in the United States. We have seen competition produce better results. But it is questionable in my view, Mr. Chairman, whether these principles and philosophies can be adequately extended to the international plane which is, of course, what the provisions of S. 999 endeavor to do. I am not totally sure that they cannot be, Mr. Chairman, to be absolutely candid. But I think there is a great deal of effort required with other nations to better understand their approaches, their interests, their objectives, before such an effort could be successful.

Most of the countries in Intelsat today are developing countries. Most of them, as others have noted, are still developing their internal infrastructure in order to serve their telecommunications needs and economies. In fact, due to Intelsat, most of these nations, who contribute probably close to $1 billion of the almost $2.3 billion investment in the space segment of Intelsat, are developing countries who were put in the position of leapfrogging technology because of prescience on the part of the U.S. Congress and the executive branch of Government. They are now dependent upon the Intelsat system to a degree greater than countries in the developed parts of the world, including this country, Canada, and the European countries.

Mr. Chairman, others have talked about the impact on Intelsat, the significant economic harm, and have distinguished other proposals from the concept that is contained in S. 999 and is to be found in an application that is pending before the Federal Communications Commission. It seems to me that at this stage, without further investigation, without further consultation, enunciation on the part of the United States of a national policy to permit the establishment of international satellite facilities to duplicate and compete with the coverage of the Intelsat system would be seen to contravene the spirit and the letter of the Intelsat agreements. It certainly would invite other nations to follow suit, follow suit primarily for industrial ambitions to compete with American companies which, as others have already noted, contribute most of the technology of the Intelsat system through Intelsat's 16 satellites.

In the interests of time I will not repeat some of the comments made by others, Mr. Chairman about efficiency in the use of the geostationary orbit and frequency spectrum problems as well as economies of scale. I simply would like to make a few further observations. One is that competition, which I have a bias in favor of, in the provision of international facilities, in contrast with the provision of services of an international nature, will possible prove to be very counterproductive to U.S. interests. It would certainly, in my view, mean changing the Intelsat organization and its modus operandi in a signficant manner.

I note from comments of Dr. Charyk, that the FCC last year in dockets 82-540 and 82-548, had proposed changes to open competition in the provision of services within the domestic U.S. economic context. I think that will augur well for greater demand on the Intelsat system, and it is something that Intelsat should probably welcome. But I question seriously whether competition in the provision of facilities, transmission facilities, is needed and indeed could take place without some very significant changes with respect to Intelsat.

There is going to be competition in the next few years in a very significant way due to technological developments: fiber optic capabilities, and the installation of submarine cables not only across the North Atlantic, but in the Indian Ocean region and probably in the Pacific region as well. These are facilities that can be provided without the need to coordinate with Intelsat.

So Intelsat has had its competition defined for it as being other medium capabilities and the capability of other satellite systems in those instances where Intelsat cannot provide the service or cannot provide the service on a meaningful basis.

I would like to note, Mr. Chairman, that we are talking here about something that I have heard referred to as the winds of competition. If the winds of competition are seen by the proponents of Intelsat competition to be blowing, then it is most important to revisit and revise the Intelsat charter and mission. I think that is a precursor to adopting any particular form of legislation. The United States cannot and should not unilaterally try to affect the activities and scope of Intelsat on the international plane without such revisiting of the charter and the mission, together with its partners.

I would depart from that approach in one situation only, Mr. Chairman, and that is if Intelsat had proved to be a highly politicized organization inimical to the interests of the United States, perhaps along the lines described by Ambassador Gardner earlier. If Intelsat departs from its commercial character or if it has been seen to be politicized, or if it has been ineffective, then under those circumstances perhaps the United States might consider the need to take unilateral actions.

But I do not think anyone has submitted any scintilla of evidence to the effect that this is the case. And, accordingly, I think it is premature at this time for S. 999's provisions to be enacted. I think rather than the United States taking a drastic departure from its commitments, from its role in the establishment and from the leadership that it has provided to Intelsat, it would be far wiser to investigate in more detail whether or not there is a need for the kind of facilities that have been described and are contemplated under this provision of S. 999.

It seems to me, Mr. Chairman, that at least one major purpose the drafters of S. 999 probably had in mind has been achieved, and that is we have begun a dialog and a discussion of the formulation of national telecommunications policy as it applies to international facilities. I would hope, Mr. Chairman, that this dialog would result in a reaffirmation of the U.S. commitment to Intelsat, to its purpose, and a recognition of the successes over the last 20 years.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF RICHARD R. COLINO

Mr. Chairman, members of the Committee, ladies and gentlemen, I am Richard R. Colino, President of DynaCom Enterprises Limited, a communications consulting corporation, and the nominee of the United States INTELSAT Signatory, COMSAT, and the United States Government, as the U.S. Party to the INTELSAT Agreement, for the position of Director General of INTELSAT. The Curriculum Vitae submitted to INTELSAT in connection with my nomination is attached to this Statement and details my activities and association with satellite communications since 1962.

It is a privilege for me to appear before the Committee this morning and to offer my views with respect to certain provisions of S. 999. My statement is directed to those aspects of S. 999 which I deemed appropriate for me to address as nominee for the position of Director General, INTELSAT. Accordingly, my remarks are primarily directed to the international implications of certain provisions of S. 999 although I am prepared to respond to questions or comments on other aspects of the bill if my comments may be helpful. The views expressed herein are mine and mine alone; I do not represent or speak on behalf of any agency of the United States Government or COMSAT.

Mr. Chairman, I come to this hearing with a bias based upon more than 20 years of experience in multiple aspects of communications and entertainment, regulated and unregulated, which favors permitting commercial and marketplace forces whenever feasible to determine those facilities and services to be made available to telecommunications consumers and users. As a matter of philosophy I find merit in the view that competition and competitive forces can and will result frequently in quality and economically attractive services for the public in circumstances where this approach can be implemented effectively within the confines of a nation and a sigular economic system. Questions remain as to whether marketplace and competitive forces work on an international plane in the provision of transmission facilities, how such forces could affect INTELSAT and what results would be obtained from the application of such an approach.

To analyze these possibilities in the context of INTELSAT requires some revisiting of the origins and purposes of the organization and its activities and accomplishments to date. It is not my intention to dwell at length on these matters since it may be assumed that the responses of INTELSAT and COMSAT to invitations to

appear before the Subcommittee will do so. However, some points merit emphasis in view of my involvement in the creation and development of INTELSAT over some years, reading a recent INTELSAT letter to the Department of State and my observation of the INTELSAT Meeting of Signatories in Bangkok last month.

It is not unreasonable to state that the fundamental principles underlying the INTELSAT organization and the moving forces for its creation almost 20 years ago are to be found in the Communications Satellite Act of 1962. The United States determined to establish a global communications satellite system by sharing its technology with other nations in order to jointly own and operate a system. Section 102 of the Satellite Act declared that:

". . . it is the policy of the United States to establish, in conjunction and in cooperation with other countries, as expeditiously as practicable a commercial communications network, which will be responsive to public needs and national objectives, which will serve the communications needs of the United States and other countries, and which will contribute to world peace and understanding.

"The new and expanded telecommunications services are to be made available as promptly as possible and are to be extended to provide global coverage at the earliest practicable date. In effectuating this program, care and attention will be directed toward providing such services to economically less developed countries and areas as well as those more highly developed, toward efficient and economical use of the electromagnetic frequency spectrum, and towards the reflection of the benefits of this new technology in both quality of services and charges for such service."

These principles and purposes were reflected directly in the agreements creating INTELSAT in 1964 and the definitive agreements which govern INTELSAT today, following their entry into force in 1973. The INTELSAT definitive agreements, one between Governments having the status of a treaty or equivalent (in the United States a Congressionally—authorized Executive Agreement), and the other an Operating Agreement between telecommunications entities designated by their governments, are now in effect for 109 nations. The purpose of INTELSAT is to continue the development of the telecommunications satellite system with the aim of achieving a single global commercial telecommunications satellite system as a part of an improved global telecommunications network. (Preamble of Agreement). INTELSAT is a unique international organization, a commercial cooperative venture of governments and their telecommunications entities which have joined together to combine technical and financial resources in order to establish and operate facilities which can be used to provide services within the defined market areas of a country or jurisdiction. This common cooperative effort is intended to produce and does produce technical, economic and even political benefits for INTELSAT member nations and for non-members who use the system on a non-discriminatory basis.

It is undeniable, although all too often unappreciated, that INTELSAT in its growth and development has achieved and continues to achieve the objectives set for it. Its membership has grown from a dozen countries in 1964 to 109 today. The satellite system has evolved from Early Bird (INTELSAT I) to some 17 in orbit (15 operational) through the INTELSAT V series, with INTELSAT VI satellites planned for deployment in 1986. Growth from 150 telephone channels being carried by the system to some 60,000 in a span of 18 years. Technical capability of satellites in orbit increasing from 240 telephone channels in the timeframe of Early Bird to 36,000 channels in the design of the INTELSAT VI satellites and the in-orbit operating lifetime of satellites improving from 18 months to 10 years in the same period. The system has changed from the operation of one satellite over the North Atlantic with one Earth station on each side of the Atlantic in 1965 to hundreds of earth stations accessing satellites in three ocean regions and constituting approximately 1,200 earth station to earth station paths today and has developed from the initial phase of a limited experimental/operational geo-stationary satellite placed in orbit 18 years ago to a global system today serving the entire world with some 170 or so political jurisdictions using INTELSAT satellite facilities for overseas communications. Dramatic reductions in charges have taken place from the charge for a telephone channel on Early Bird (exclusive of earth station and landline charges) set in 1965 at $64,000 per year to a level today of $9,360 per year, or a reduction of some 85 percent. The technology employed in the satellites and the sophistication in operation of the INTELSAT global system have had corresponding advancements and developments. Variety, quality and reliability of service via the INTELSAT system have increased significantly as have the users and uses, so as to include today more than 20 nations utilizing the system for domestic communications links and INMARSAT using a capability developed for them in the INTELSAT V satellites in addition to international fixed service transmissions.

From this sketch of the development of the INTELSAT organization and system since the United States took the initiative to propose its creation in the early 1960's one should conclude that it has and is meeting the objectives and purposes for which it was created.

Its facilities are used throughout the world on a daily basis and are available for a multiplicity of purposes, public and private. With sound management and technological advances in the future, these and newer uses should continue, accompanied by reductions in space segment channel costs.

What advantages would accrue and to whom, from passage of S. 999? In particular, what would be the effect of the provisions of Sec. 2(3) that "it is essential to encourage the entry of new carriers in the offering of international telecommunications services *and facilities*" (emphasis added) and the provision in Section 304(a) to amend the Satellite Act (Section 102d) to read:

" . . . nor to preclude the creation to additional domestic and international communications satellite systems, if required to meet unique governmental needs or if otherwise required in the national interest *or if such other communication satellite system will otherwise serve the public interest, convenience and necessity.*" (Emphasis added).

What impact upon INTELSAT and other nations? If it were the generally shared opinion of the INTELSAT membership to permit competition in the international facilities arena, what changes would be required of INTELSAT prior to permitting such competition? Clearly, the concepts and principles underlying the creation of INTELSAT and the agreements and structure of the present organization are not based upon principles of competition in the establishment and operation of international communication satellite facilities. The Agreement between Governments to which the United States Government is a Party, which constitutes part of the definitive arrangements of INTELSAT, contemplates the INTELSAT system as the sole international satellite system sanctioned by its members and that members intending to establish, acquire or use other satellite system facilities for international services would have the burden of demonstrating that they would not cause "significant economic harm" to INTELSAT as well as not interfering on a technical basis (Article XIV). Various systems which have been established for specific objectives and which have been coordinated with INTELSAT pursuant to this provision have been found to have an insignificant impact upon INTELSAT. In fact, the same will have to be the case with respect to prospects for use of domestic U.S. satellites for carriage of traffic between the U.S. and other countries. In July 1981 the Department of State stated its policy views with respect to the exceptional and well defined circumstances under which U.S. domestic satellites may carry transborder traffic and Transborder Data Services decision of the Federal Communications Commission in October of 1981 reaffirmed this as well as the support the U.S. continues to give to the INTELSAT global system.

Enunciation of a national policy to permit the establishment of international satellite facilities to duplicate and compete with the coverage of the INTELSAT system would be seen to contravene the spirit, and letter, of the INTELSAT agreements. It would certainly invite entry by organizations wishing to provide facilities on the richest, most heavy and profitable routes i.e. transoceanic heavy routes such as the North Atlantic and, potentially, a proliferation of facilities. As one observer at the recent INTELSAT Meeting of Signatories noted, there seldom if ever appear to be new entrants who wish to provide facilities to serve the "thin" traffic routes. A proliferation of satellite facilities by others following such a policy in heavy route traffic streams in the ocean regions served by INTELSAT would destroy the ecoomic foundation and benefits of INTELSAT.

I agree with many of the observations made by representatives of INTELSAT Signatories at the recent meeting in Bangkok concerning the serious negative impact upon INTELSAT of authorization of transoceanic satellite systems in competition with INTELSAT—because they would serve users, directly and indirectly, which INTELSAT was established to serve (and primarily on heavy routes, at that). Efficiencies in the use of the geo-stationary orbital arc and frequency spectrum would be diminished; economies of scale and operational benefits deriving from the INTELSAT system would undoubtly be affected adversely. Financial benefits derived by all users, members and non-members alike, would be diminished as INTELSAT system would have to increase its charges to balance the loss of revenue received or anticipated as a result of less efficient use of the INTELSAT satellites. INTELSAT members would see their investments in the space segment, soon to exceed $2.3 billion, potentially jeoparized. It would be difficult for INTELSAT to maintain its record of success and to endeavor to be innovative in the future in terms of new services and the development of technology. The negative economic and financial impacts upon

INTELSAT would undoubtly be followed by "political" repercussions as the underpinnings of the organization were pulled and the organization was put in a position where others were able to "compete" with it for the most lucrative communications paths. The INTELSAT system planning and commitments, which extend into the next decade, have been based upon the reasonable expectation that the rationale, rules and regulations for the global INTELSAT system enterprise would be continued. If traffic were diverted to other international facilities, INTELSAT would have in place or on order facilities which would in all likelihood be excessive for the usage which would be made of the system.

It would appear to be clear that if there are to be benefits to be derived from "competition" in the provision of international facilities—in contrats with the provisions of services of an international nature within the confines of a nation—then INTELSAT should be given the opportunity to "compete" on a fair basis with others. This means changing the organization and its modus operandi in a significant manner.

There are already changes underway as INTELSAT enters into a period of consolidation of the rather remarkable expansion of facilities and services which has taken place over the past decade, concentrates on the offering of newer and diverse services of primary importance—within its charter to provide and endeavors to anticipate and expolit technological developments through the end of this century. Moreover, with the vagaries of worldwide economic fluctuations and circumstances and the introduction in forthcoming years of high capacity optical fibeir submarine cables capable of providing greater capacity and some multipoint capability at a iower cost, INTELSAT has challenges of some moment in the years which lie ahead. There are and will be other satellite systems seeking use of orbital slots and frequencies with which INTELSAT will have to make accomodation. The INTELSAT membership itself is conscious of these and other challenges and all would agree that the organization must be more efficiently managed as such developments occur in the remainder of this century.

In addition, to encourage other satellite systems to compete with INTELSAT would have a most negative impact on certain countries which have no choice but to use the INTELSAT system in order to achieve the interconnectivity they require for their international telecommunications services. Conceivably some INTELSAT countries could use other facilities such as submarine cables or even other satellite systems should they be established. A result could be that those least able to bear the burden would be the most seriously affected. This would represent a major change from the present where the lesser developed countrieis, highly dependent upon the INTELSAT system, provide a market driving force for INTELSAT to decrease its charges by any and all means available to management and at the same time continue to grow in diverse international service offerings and the lease of satellite capacity for domestic applications.

In view of these facts, summarily presented, it appears reasonable that the provisions of S. 999 should be enacted only on the basis of a perception that the remainder of the INTELSAT membership share the view that the competitive benefits from the prospect of authorizing alternative facilities outweigh the detriments to the INTELSAT system, it owners and users. The United States could not and should not consider adopting such a policy absent further study of the consequences and certainly not on a unilateral basis absent compelling reasons, such a determination that INTELSAT had departed from its commercial character and had become a highly politicized ineffective organization. Such circumstances do not appear to have materialized and are merely hypothetical. If, on the other hand, the "winds of competition" are seen by the preponderance of INTELSAT members to be blowing, then the INTELSAT charter and mission should be revisited. The "average cost pricing" principles of the Agreement (Article V) should be abandoned as should the fully allocated cost inhibitions of Article III of the Agreement and Operating Agreement (particularly Article 8). INTELSAT would have to consider revisions of its operating principles and plans which are the product of a perceived requirement to serve all users on a universal basis and on non-discriminatory terms. As an example, it might well be that INTELSAT could no longer adhere to the concept of having a Primary satellite in each ocean area which can be accessed by all earth stations within the zone of coverage, thus requiring more earth stations and antennae to be built. The "are and attention" described as being appropriate to developing countries and areas in the Satellite Act, and extrapolated in many positive ways by INTELSAT policies and programs over the years as part of the notion of a "cooperative" venture, would of needs be reviewed and perhaps redefined. In sum, a number of modifications and adjustments of INTELSAT policies would be required; as would, in all probability, provisions of the definitive agreements.

Should any or all of these be required they would take a good deal of time and agreement to accomplish. Much time and effort would have to be devoted to such a task at the very time when INTELSAT and its governance and management will be increasingly market and cost conscious as they proceed to address the needs of users and members into the 1990's.

In view of these and other factors, which would require more time and study, it appears to me that the provisions in S. 999 providing for the authority to authorize other than INTELSAT international satellite facilities should not be adopted at this time. Absent some drastic departure by INTELSAT from its character and purpose, consideration of the enactment of such provisions should be preceded by dialogue with the international INTELSAT community and after providing INTELSAT management with ample time to prepare for such a radically change environment. The enactment into law of such provisions, whether by the United States or any other country, should occur only after it has been concluded from measured studies that the extension of marketplace and competitive principles and policies is feasible in a totally different environment than may exist within the confines of a nation or that they are likely to bring about greater benefits than would a continuation of and imporvement in the management and operation of the INTELSAT system.

In conclusion, I am appreciative for the opportunity to prressent these views and am prepared to respond to any questions and comments which they may bring forth. I also wish to indicate that I believe that the introduction of the provisions of S. 999 which I and others have addressed, and the dialogue which has resulted, may have a salutary effect on INTELSAT and others. It may well serve to spur INTELSAT on to more innovations in the technology, quailty and reliability of its facilities and heighten the awareness of all associated with the organization of the continuing need for efficiencies and economies in the introduction of new services via INTELSAT facilities.

Senator GOLDWATER. Thank you very much, and I have just a few questions for the panel. This is directed at the panel. Anybody can answer, and then you can argue.

What are the conditions under which a signatory to Intelsat may feel comfortable in licensing a non-Intelsat international satellite system?

Mr. ASTRAIN. Thank you, Mr. Chairman.

Perhaps I am asking for the floor just to answer your question, but perhaps to add a little bit more.

I started by thanking you for your kind invitation to this meeting, where the views of Intelsat could be heard. I did not expect, however, Mr. Chairman, that I would be subject to a debate here, especially with one of the possible entrants in the field of telecommunications, so I am a little surprised that I was put in the situation where I would have to answer the questions that Mr. Vizas is putting.

But I would like to correct a number of things. First, I do not represent any company. Intelsat is not a company. It is not a consortium, either. As I said, it is a full fledged international intergovernmental organization.

He is right when he says that we do not have to have expertise in U.S. domestic law, but I can assure you, Mr. Chairman, we have a lot of expertise in the Intelsat agreements, and everything we have said is based on the Intelsat agreements, and the qualification of the type of services is in the Intelsat agreements, and we have interpreted them as we always have done.

Going to your question, Mr. Chairman, the history, as I told you before, is that other systems have been authorized under the Intelsat agreements when the governments have come to us, and the United States has come to us a number of times. All the domestic systems of the United States have been authorized under article XIV(c) of the agreements. Thus, systems that were in the ordinary

way transporting what Mr. Vizas has called public communications, and also, those that he said are different because they are leased transponders, all of them have always been coordinated with Intelsat under article XIV(c) if they are domestic, article XIV(d) if they cross international boundaries.

As I mentioned in my testimony, the cases where they cross international boundaries are few, Eutelsat,, Arabsat, Palapa. The amount of traffic, the kind of traffic that they are going to put on those systems are of such kind and magnitude that Intelsat has found through its normal coordination procedure of article XIV(d) that it would not cause significant economic harm to Intelsat.

So this is the way other governments act in the process of trying to authorize separate systems.

Thank you, Mr. Chairman.

Senator GOLDWATER. Thank you.

Mr. Vizas, Mr. Colino, do you care to comment?

Mr. COLINO. Perhaps, Mr. Chairman, I could make a brief comment, and that is that both the Satellite Act and the intergovernmental Intelsat agreement which in the United States, I believe, is in the form of a congressionally authorized executive agreement, having the status of a treaty, and it is binding, have very detailed procedures to permit coordination of separate systems. If the type of system that Mr. Vizas has described were to be approved by the Federal Communications Commission, it would have to undergo the same coordination, both technical and significant economic harm.

I think that that matter is fairly well established and the record abounds with examples. I think there will be some more in due course as a result of the transporter data decisions of the Commission last year.

I think, Mr. Chairman, however, what is contemplated in S. 999 is a little bit different. It contemplates the potential, without the enunciation or elaboration of clean standards, leaving it apparently to the Commission to decide, which other systems would meet the standard of serving the public interest, convenience, and necessity. If such an approach were adopted as a matter of national policy, then I think what has to be done is that the concept of rate averaging which underlies significant economic harm in article XIV has to be revisited, at a minimum, because significant economic harm will occur regularly on any occasion when a heavy route traffic stream is permitted to have cream-skimming alternative facilities. That would put this country, if this were to occur, which I do not believe it will, but if it were, would put the United States in periodic conflict with the Intelsat agreements. And it would seem, therefore, to me that it would be wiser to revisit the Intelsat agreements if it ever got to that point before embarking on such a course of action.

I wanted to make that earlier, Mr. Chairman. I think it is perhaps better made in the context of your question. Thank you.

Mr. VIZAS. Mr. Chairman, I would like to respond on three points.

I was not here in 1962 to watch the deliberations of the Senate. However, many of those involved with the Satellite Corp., the Orion Satellite Corp., were around at that time. In addition, as far

as the public record goes, it paints a little bit different picture than Mr. Colino and Mr. Astrain and Mr. Charyk have suggested.

First of all, section 102(d) which you amend in section 304(a) of S. 999, has a standard called the national interest standard. That standard has been interpreted, for over a decade, in terms of the decisions of the Federal Communications Commission, and according to the legislative history of the act, to include the public convenience and necessity.

I think that that area of the question of interpretation in the reach of the act is important. What is in S. 999 is clarification, not a major change in U.S. policy.

The second point is that the Intelsat agreements are executive agreements entered into pursuant to legislation. A point was made earlier that the Senate should wait to legislate until after the Intelsat agreements are rewritten. It strikes me that that is backward both as a matter of ordinary public policy in this country, and indeed, of constitutional law, that in reality, what should be done first if you want to make changes in the Intelsat agreements—and that is a judgment for the committee to make—would be to legislate the direction that you wanted the United States to go, to enunciate the policy that the United States should pursue. It is not an executive branch prerogative, but indeed, it is a legislative prerogative to determine what the policies will be in terms of foreign and interstate commerce, as the members of this committee are well aware.

Finally the Intelsat agreement does not provide in all cases for economic coordination. Only one of the three coordination processes under the agreement provides for economic coordination. That is (d), involving public telecommunications facilities.

When the Satellite Act was passed in 1962, there was a clear distinction in U.S. law between public and private facilities. The Satellite Act tacitly or expressly recognized that distinction and clearly, only proposals involving public telecommunications facilities would be required to go through XIV(d) of the Intelsat agreements. Domestic or nonpublic telecommunications facilities would go through separate coordination processes.

Thank you.

Senator GOLDWATER. Thank you.

Mr. Vizas, critics of your plan allege that you are in part providing a competing common carrier service since presumably established U.S. carriers may acquire transponders from Orion to provide the services they now use intelsat facilities to provide.

How do you respond to that?

Mr. VIZAS. Senator, we are requesting a license to put up a private facility, much, for example, like Hughes Galaxy has done domestically. Should a common carrier decide that they wanted to buy transponders on that facility and use them for common carrier purposes, as they do the intelsat facilities right now, they would be subject to an additional regulatory process. First of all, under current law, they would be required to go to the FCC and file a section 214 application to use that facility for common carrier purposes. With all this talk of deregulation, it is still true that there is some regulation, and it is critical regulation. And in this area, one would assume that if someone wanted to use the facility for common car-

rier purposes after they had applied for that section 214, that the FCC and the other branches and organs of the U.S. Government would require them to go through the appropriate coordination processes at Intelsat: if they wanted to use the transponder for purely domestic purposes, XIV(c), if they wanted to use the transponder for international common carrier, XIV(d).

Senator GOLDWATER. Thank you.

Gentlemen, it is coming up to the hour of 12 o'clock, and we have some other commitments that we have to attend to. There are several questions that we did not have time to ask. We will submit them to you by mail, and you can answer them.

I want to thank you on behalf of the subcommittee, all of you, for taking your time today to come.

Tomorrow morning we will hold further hearings on this subject.

So thank you.

[Whereupon, at 11:50 a.m., the subcommittee recessed, to reconvene on Wednesday, May 11, 1983.]

INTERNATIONAL TELECOMMUNICATIONS ACT OF 1983

WEDNESDAY, MAY 11, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, in room SR-235, Russell Senate Office Building, Hon. Barry M. Goldwater (chairman of the subcommittee) presiding.

Senator GOLDWATER. The committee will come to order.

This morning we will continue our hearings on S. 999, the International Telecommunications Act of 1983. And on our panel, the first panel this morning, we will have the Honorable Mimi Dawson, who is a member of the Federal Commumications Commission; and Lt. Gen. William Hilsman, Director of the Defense Communications Agency.

I did not put you in that order for any other reason than that she is a lady.

Ms. DAWSON. Thank you, Mr. Chairman.

Senator GOLDWATER. You may start any way you wish to.

Ms. DAWSON. I will defer to the gentleman.

Senator GOLDWATER. What did you say?

Ms. DAWSON. I said I would defer to the gentleman.

Senator GOLDWATER. Well, I am not testifying.

All of these new rules about men and women. I get all screwed up.

All right. We will recognize you, Mimi. You can go ahead, if that is what you want.

Ms. DAWSON. No, Mr. Chairman, if I could, if General Hilsman would go first, I would like to comment on some of the new provisions we have worked out together, if that is all right with you.

Senator GOLDWATER. I did not hear you, but that is all right

STATEMENT OF LT. GEN. WILLIAM J. HILSMAN, DIRECTOR, DEFENSE COMMUNICATIONS AGENCY

General HILSMAN. Senator Goldwater, thank you for giving me the opportunity to appear before you again. I have a statement for the record I would like to submit for the record, and I would like to highlight the key issues.

Senator GOLDWATER. It will be put in the record.

General HILSMAN. As you recall from my testimony last year on S. 2469, I come before you with two hats: the Director of the De-

fense Communications Agency with worldwide responsibility for communications with the Defense Department, and I am also the Manager of the National Communications System with the responsibility of pulling together all the Government's communications assets in times of emergency to be able to handle those kinds of opportunities or challenges.

I also focused for you in my testimony last year why legislation in telecommunications is so critical to national security and emergency preparedness. I mentioned to you that if you go into our overseas world, into a NATO scenario, 65 percent of the communications over there are provided by soldiers, sailors, airmen, and marines. And I know you have seen them all over the world. But when you come back to the United States, we rely on the private sector. Ninety-five percent of our emergency communications assets here are provided us by the private sector, by the commercial carriers.

It has been the policy of the U.S. Government to rely on the private sector to provide all telecommunications services wherever and whenever possible, so a set of questions are obviously germane. What do we have to do to be sure we have the communications we require in emergencies and disasters?

Four things: One, we need to be able to plan, plan ahead so when something happens we are ready.

Second, we need to have a redundant, robust network to begin with.

Third, we need the ability to manage and control that entire network to be able to restore and reroute when something happens to it.

And fourth, we have to have a solid set of technical standards so that when we bring new things in, they will all interoperate in a network.

How have we done it in the past? Very simply, we called AT&T. AT&T did the work for us. When we had an emergency, we called AT&T. They coordinated with the other carriers. We caught up with the bill-paying quite a bit later. When something happened, we called them, they went, and we paid the bills later.

I do not need to tell you we are moving into a new world. We are already partially there with the Computer II decision on January 1, 1983. We are into the world of divestiture. Those decisions have been made, and we are not looking back; we are looking forward.

So what do we need now for national security as we go into that new world of telecommunications out there? I would suggest we need the following:

We need, as I have said before, to be able to do joint planning. Whereas we have an industry out there with a lot of parts that will all be competing, for these issues that I am addressing today we need that industry to come together, to pull together, to work together, and to plan together so that when we have some kind of emergency we can handle it.

What are we doing to be able to handle that? Well, as you probably know, last year the President established a committee, the National Security Telecommunications Advisory Committee. I am by law the designated Federal official for that committee.

That committee has met once with the President. They are working today to try to figure out with all of the pieces of the network out there how to bring them together in a time of emergency. While they are all competing in one sense, for national security purposes they are working with us to figure out how to bring that network together when we need to in times of an emergency.

We are asking again today for the kind of national security legislation you included last year in S. 898 and S. 2469 to give us the legal framework for this kind of joint planning we are involved with, to authorize in the law this commission kind of activity we are involved with, and to authorize in the law the FCC upon a public interest finding to require joint planning if needed, to adopt regulations to provide for priorities when we have to move into the priority world to get things reestablished in a hurry, to adopt regulations and standards so we can have this network work together and interoperate, to authorize—and I will stress, require if necessary—joint actions by the carriers in emergencies, and to set up the financial basis for this national security and emergency preparedness planning.

We have asked for one more thing in the law, and that is the designation of the National Security-Emergency Preparedness Commissioner in the FCC. Commissioner Dawson, who is with me today, is that person today; but previous administrations have seen fit not to have that kind of person in place.

We need the FCC and what they do as a partner when we have these national security and emergency preparedness issues. The FCC works in the public interest, and I suggest that national security is also in the public interest.

Let me summarize quickly what we are proposing. We are here—the executive branch, the Federal Communications Commission—working together as a team for our national security and emergency preparedness. We each have responsibilities.

Senator, to pull it off for the Nation in a crisis we must work together. We need you to provide the legal base to do it. We really do need your help. The provisions you had last year were great. This year, very frankly, sir, as they are written today they do not do the job for us.

We will provide you the specific wording we need, and it will be a coordinated Government position between the executive branch and the Commission.

My plea to you today is to get this as a part of S. 999 or all by itself if necessary, because we are going into a new world, and we need that kind of help.

Thank you, sir.

[The statement follows:]

STATEMENT OF LT. GEN. WILLIAM J. HILSMAN, DIRECTOR, DEFENSE COMMUNICATIONS AGENCY

INTRODUCTION

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to again appear before you to express the views of the Department of Defense on telecommunications legislation which you have prepared. I also want to extend my congratulations to you and your staffs for continuing the difficult task of seeking to update the legal framework in which our telecommunications industry operates. I

second Mr. Latham's view that Congress and the Executive Branch, not regulatory bodies or the Courts, should establish the goals and guidelines for domestic and international telecommunications policy in the years to come.

As in my prior appearances regarding S. 898 and S. 2469, I appear before you "wearing two hats". First, as the Director of the Defense Communications Agency one of my responsibilities is to ensure that the Defense Communications System (DCS) is planned, engineered, operated, and managed so as to effectively and economically meet the long-haul, point-to-point telecommunications requirements of the National Command Authorities, the Department of Defense, and other governmental agencies as directed. Second, the Secretary of Defense has designated the Director, DCA, as the Manager of the National Communications System (NCS). The NCS is organized as a confederation of the telecommunications assets of eleven federal agencies, including the Departments of State and Defense, the Federal Aviation Administration, the Federal Emergency Management Agency, the General Services Administration, the Central Intelligence Agency, and the National Aeronautics and Space Administration. The primary mission of the NCS is to ensure that Federal telecommunications resources can be operated to effectively satisfy the most critical telecommunications needs of the Federal Government in any possible emergency situation, ranging from localized natural or man-made disasters to national emergencies, including nuclear attack.

THE DOD/NCS MISSIONS AND COMMERCIAL COMMUNICATIONS

Before directly addressing S. 999 and its treatment of national security and emergency preparedness telecommunications needs, I want to briefly review what we at DOD need from the telecommunications industry to perform our mission.

First, what is our mission? Simply put, it is to have adequate communications capability to ensure that we can protect our Nation during peacetime, defend and reconstitute our Nation if we are attacked, and maintain preparedness to both deter enemy attack and deal with natural disasters. While other telecommunications users would thus share our desire for a variety of low-cost, innovative telecommunications services, and also have an obvious interest in our ability to perform our mission, we at DOD, and the NCS, have broader needs to which the telecommunications industry must respond.

Second, what do we need to perform our national defense and security and emergency preparedness mission? Again, simply put, we need a worldwide telecommunications capability to provide:

Connectivity between the National Command Authority and our national forces before, during, and after any attack.

Support for the mobilization of forces.

Operational control of forces during a conflict.

Support for the continuity of government during and after war and natural or man-made disaster.

Reconstitution of any part or all of the Nation during and after war and natural or man-made disaster.

Protection at all times of sensitive information transmitted over the telecommunications system.

Thus, in addition to reliable, responsive, and flexible telecommunications (i.e., adequate quality, readily available, worldwide service) necessary to meet all users service needs, we also require:

Survivability—a communications system able to effectively perform during and after a disaster or period of military conflict.

Restorability—alternate routing, facilities redundancy, and interconnection and interoperation capability sufficient to provide rapid restoration of service to damaged areas of the Nation.

Credibility—a system of sufficient robustness to contribute to the Nation's deterrence posture by creating the perception in any potential aggressor that it can and will provide service during and after any attack or other crisis situation.

Third, why do we need these qualities in our commercial telecommunications industry? The answer is again straightforward. As is reaffirmed in new Section 602(a) of the 1934 Communications Act as amended by S. 999, it has long been the policy of the United States to rely on the private sector to provide all telecommunications services wherever and whenever possible. Consistent with this philosophy, as our communications needs in the United States have evolved, we have relied primarily upon the commercial carriers to satisfy our requirements and the Federal Government today obtains more than 94 percent of its most critical domestic communications circuits from commercial carriers. Existing federal emergency systems de-

signed to provide critical communications depend primarily upon facilities or services provided by the commercial telecommunications industry. For example, the President and the major DoD command and control missions in the United States such as the Strategic Air Command (SAC) and the North American Aerospace Defense Command (NORAD) rely heavily upon commercial carriers for command and control communications. In fact, SAC's Primary Alerting System (SAC PAS), which is employed to communicate with and among SAC's worldwide bomber and missile forces, relies totally upon commercial telecommunications resources. These factors demonstrate that, in performing our national security and emergency preparedness missions the Federal Government must engage in extensive dealings with, and is significantly affected by the laws governing, the commercial communications industry.

SPECIFIC NATIONAL SECURITY/EMERGENCY PREPAREDNESS PROVISIONS

Having summarized our mission, what communications capability we need, and why we need much of it from the commercial telecommunications industry, I can now turn to what national security and emergency preparedness provisions we at DoD, and at NCS, believe must be contained in any communications regulatory reform legislation, such as S. 999.

From our perspective, the most critical factor to the ability of the expanding telecommunications industry to provide national security and emergency communications will be the ability for all industry entities to engage in prior joint planning and preparation to subsequently respond in a prompt, coordinated manner on an industry-wide basis. In our view, to obtain effective emergency communications, it is absolutely essential that: (1) extensive preplanning and pre-emergency arrangements be accomplished by all carriers; (2) a robust and survivable nationwide telecommunications network be provided; (3) the capability to manage and control the network so as to reroute, restore, or rapidly initiate service be continued and markedly improved to meet the changing threat; and (4) technical standards continually be developed and established so that all portions of the nation's telecommunications resources are capable of interoperation and universal connectivity. These are critical factors to the ability of the telecommunications industry to provide national security and emergency communications.

In the past, to obtain responsive telecommunications in Presidentially-declared emergencies (e.g., earthquakes, floods, or Mt. St. Helens), and other crises (e.g., assassination attempts, the Cuban or Vietnamese refugee relocations) we turned to a telephone industry dominated by a single entity, the nationwide Bell System, which possessed a central management organization able to draw manpower and equipment from anywhere in the U.S. Standardized equipment, training, and installation methods and maintenance practices existed, which ensured the expedited utilization of available resources, thereby permitting rapid restoration or initiation of service in any location. Moreover, extensive and detailed network planning, from customer premises to customer premises, was performed by the Bell System, with the participation and cooperation of the Independent Telephone Companies. The ability of the telecommunications industry to react quickly, and effectively, to meet our needs in times of crisis or emergency was thus directly dependent upon and related to the extent of advance planning by the telecommunications carriers involved. Workable intercompany operating procedures, prepositioned equipment, and standardized personnel training had been accomplished in advance so that the industry could be responsive (i.e., get the people and equipment to where they are needed fast). Detailed plans for network restoration, to inclue the rerouting of voice and data circuits on different paths all the way to the end instrument, had been developed and were ready for instanteous implementation. Mechanisms to assure that "the paperwork" eventually caught up with the orders placed, and that the necessary funding was provided were also pre-established.

We recognize, however, that the forces of technology, the FCC's Computer Inquiry II decisions, and the impending divestiture of the Bell Operating Companies from AT&T are dramaticlly reshaping the structure of the telecommunications industry. These dramatic changes have the potential for substantially improving the survivability, restorability and credibility of our nationwide communications system. But, in our view, these improvements will only occur if the mechanisms exist to guarantee that the kinds of actions I have mentioned, and more, will be taken by all telecommunications carriers and service providers, to ensure that we, and your constituents, will continue to have a nationwide telecommunications system upon which to rely for effective response during times of crisis or emergency, no matter what the level. Today, the telecommunications industry, with the leadership of the

nationwide Bell System, performs these activities. We are convinced that continuation of this capability and its extension to involve all telecommunications carriers and service providers, is a matter of extreme importance, particularly in the rapidly evolving, less regulated, more competitive telecommunications marketplace.

It is for this reason that we have repeatedly urged in our previous testimony on S. 898 and H.R. 5158, the comprehensive domestic telecommunications legislation, and on S. 2469, your predecessor to S. 999, that statutory safeguards must be established to ensure joint planning can and does occur in the telecommunications industry. As a result, extensive statutory provisions were contained in S. 898, S. 2469, and H.R. 5158, authorizing and requiring all telecommunications industry entities to engage in joint planning through developing plans and procedures for the protection and restoration of essential telecommunications, and preparing for the interconnection and interoperation of facilities and services when necessary to meet national defense and security and emergency preparedness (NSEP) needs. But now, S. 999 does not.

Indeed, section 707 of 1934 Act, as amended by S. 999, contains only three brief subsections regarding defense and emergency concerns, and those subsections are seriously deficient. They require the President to establish a plan to meet NSEP communications needs before requesting joint carrier meetings, when our primary need for joint carrier planning has been to initially develop such plans. No ground rules are established governing how the joint planning process operates, the FCC is given no enforcement authority, and no guidance is provided regarding the funding of NSEP initiatives. Moreover, recognizing that we had to strive to ensure joint planning occurs even if statutory safeguards are never enacted, last year we sought, through the National Security Council, to establish an Advisory Committee under the auspices of which joint planning could occur. We were successful and by Executive Order 12382, signed September 13, 1982, the President's National Security Telecommunications Advisory Committee (NSTAC) was established. The NSTAC, currently composed of 28 senior industry executives from companies in the telecommunications industry, provides the existing framework for industry-government joint planning for national security and emergency telecommunications. To date each entity has committed substantial resources to our efforts, and cooperation has been pervasive. But the working groups are just now completing their first two reports regarding specific joint planning initiatives, and two major questions have permeated their activities. They are:

What are the antitrust implications of joint carrier/joint competitor actions to meet NSEP needs?

How will joint planning initiatives be funded and paid for?

That these questions have arisen does not suprise us. But they confirm, in our view, the need for a specific statutory scheme authorizing joint planning for the telecommunications industry, establishing a framework of rules under which it may occur, providing guidance regarding the funding of NSEP initiatives, and ensuring the FCC has explicit enforcement authority within the overall framework of its public interest responsibilities.

We submit, therefore, that new section 707 of the 1934 Act, as amended by S. 999, is inadequate and should be stricken, and replaced by provisions along the following lines:

1. Authorize the President to establish a program to ensure the availability, continuity and prompt initiation or restoration of communications services, facilities and equipment necessary to meet national security and emergency preparedness communications needs.

2. Pursuant to such a program, authorize the President to: (a) Require Federal agency and request industry entity actions regarding mutual backup, restoration and interconnection of their communications services, facilities and equipment; (b) Enter into such contracts with carriers or other industry entities as are necessary to ensure national security and emergency preparedness communications needs are met; and (c) Request carriers and other persons to engage in joint planning meetings conducted pursuant to procedures adopted with the concurrence of the Commission and the Attorney General.

3. Authorize the President to appoint an industry advisory committee on national security and emergency preparedness telecommunications.

4. Authorize the Federal Communications Commission, upon a public interest finding, to: (a) Require all carriers or other persons to engage in those joint planning meetings requested by the President; (b) Adopt regulations to provide for priorities in the initiation or restoration of communications services, including enhanced services; (c) Adopt regulations regarding technical standards, or other requirements (including provisions for interim compensation) as may be necessary for the mutual

backup, restoration, or interconnection of communications services after certification by the President that voluntary arangements cannot be made; (d) Establish and enforce technical standards for customer-premises equipment and inside-wiring, and the interconnection thereof with the communications facilities and services of any carrier, as are necessary to support national security and emergency preparedness; (e) Authorize or require joint action by any carrier, subsidiary, affiliate, or other person, to meet the communications requirements resulting from any telecommunications emergency; (f) Establish appropriate financial terms, conditions and charges for any NSEP plans, facilities, services, equipment, wiring, or modifications thereto provided by any carrier or any person in those instances when such carrier or person and the President or his authorized designee cannot agree thereon; and (g) Review and allocate any revenues received by any carrier, or subsidiary or affiliate thereof, for NSEP activities to assure no cross-subsidization or anticompetitive activity occurs.

5. Ensure the designation of a "National Security/Emergency Preparedness Commissioner" at the FCC.

Enactment of these provisions would, from the DOD and NCS perspective, provide the necessary safeguards, and explicit statutory framework, to assure that this Nation's commercial telecommunications resources can continue to meet national security and emergency preparedness requirements.

AUTHORIZED USER RESTRICTIONS

As indicated in Mr. Lathan's testimony yesterday, while DOD supports the S. 999 provisions which clarify the Commission's legal authority to permit entities other than the international service carriers to deal directly with Comsat or to own and operate Intelsat earth stations, we do not believe that S. 999 goes far enough. Let me explain why.

The Department of Defense has long believed that we are not getting international communications services as cheaply as we could and should, or in the manner as Congress thought we would when the 1962 Satellite Act was passsed. We also believe the July 23, 1966 "Authorized User" decision of the FCC was one of the factors which tended to inflate the rates we pay, just as we believe that when Congress enacted section 305 of the Satellite Act it intended to permit the United States Government to contract directly with Comsat, rather then only with the "middlemen" international service carriers as required by the FCC. We have thus frequently questioned the FCC's Authorized User decision and has a challenge to it pending before the Commission when I testified before you on S. 2469. At that time, I also noted that because of technological advances which now make possible, and financially feasible, the location of earth stations upon U.S. Government premises, and the Government's need for the physical and transmission security features associated with such customer-premises earth stations, in some instances there is no operational necessity for injecting an intermediate carrier between Comsat and U.S. Government.

In August 1982, the FCC appeared to lift the Authorized User restrictions to permit us to obtain service directly from Comsat. Unfortunately, however, the Commission limited Comsat to providing "basic Intelsat transmission service" on a direct basis and required Comsat to establish a separate subsidiary to provide "end-to-end" service. Subsequently, the FCC has also so limited what constitutes "basic Intelsat transmission service" that the August 1982 decision is not only meaningless to us, but has even forced us to back-out of a pre-August 1982 contract we had with Comsat for the provision of international television service to our Armed Forces Radio and Television Service. This has confirmed our pessimism, which I expressed to you last June regarding S. 2469, that the U.S. Government would not be permitted to deal directly with Comsat absent a legislative requirement to do so.

Accordingly, we at DOD continue to submit that substantial operating economies could be achieved if we were no longer deprived of the choice of obtaining "end-to-end" international service directly from Comsat, and not some separate subsidiary which is merely tantamount to another "middleman" international service carrier. S. 999 should be amended, therefore, to reaffirm that the U.S. Government can deal directly with Comsat to obtain "end-to-end" service, subject, of course, to the Commission's authority to review such direct dealings under the "public interest, convenience and necessity" and "just and reasonable" standards of the 1934 Communications Act, as amended. The legislative history should clarify, moreover, that this Commission authority would not encompass a determination as to whether it was in the "public interest" for the U.S. Government to deal directly with Comsat, but rather would focus upon the traditional factors (e.g., need for, rates, terms and con-

ditions of service) considered in facilities and service authorization and licensing actions.

CONCLUSION

The Department of Defense continues to firmly believe that legislation updating the laws governing our international telecommunications industry is essential, and that S. 999 contains several positive steps in the right direction. We at DOD also believe, however, that the provisions of S. 999 which address national security and emergency preparedness needs are seriously inadequate and would not serve our Nation's need for effective commercial communications to contribute to our deterrence posture. We believe extensive revision of those provisions of S. 999 is imperative to adequately provide for national security and emergency preparedness communications needs, and to that end we have prepared detailed amendments which are currently being reviewed within the Administration.

Finally, DOD continues to believe that amendment of the Communications Satellite Act of 1962 is necessary to permit the U.S. Government to obtain meaningful service directly from Comsat. Otherwise, the Commission's 1982 Authorized User Revisited decision will be meaningless to the DOD.

Thank you for listening.

Senator GOLDWATER. Thank you very much, General.

We can have a good time arguing.

Go ahead, Ms. Dawson. It is all yours now.

STATEMENT OF MIMI WEYFORTH DAWSON, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Ms. DAWSON. Thank you, Mr. Chairman. It is a pleasure to be back.

As Defense Commissioner of the Federal Communications Commission, I welcome this opportunity to comment on the provisions in S. 999 addressing national security and emergency preparedness.

Before I comment on S. 999, I would like to take a few minutes to talk, if I could, about the FCC and it role in this area, which is sometimes misunderstood.

Chairman Mark Fowler, in my view, has taken an extraordinary interest in this area, an interest aimed at clarifying the Commission's role in the provision of national security and emergency communications.

As part of his renewed commitment, the chairman appointed me as Defense Commissioner nearly a year ago specifically to bring into clear focus the FCC's responsibilities in this critical area.

Let me briefly highlight the FCC's NSEP responsibilities. They fall into three areas: regulatory, management, and planning. As to the regulatory function, in the Communications Act of 1934, section I, the FCC's charter for NSEP is defined by identifying among the purposes of the act the national defense, promoting safety of life and property through the use of wire and radio communications.

However, while Congress in 1934 properly included consideration of NSEP factors in the regulatory process, it neglected for the most part to tell us how this might be done. Even section 606 of the Communications Act deals largely with the war powers of the President. But the telecommunications environment has become much too complicated to permit a critical topic such as the role of communications in the survival of this Nation to continue to be unspecified and to continue to depend upon interpretations that may vary with time and administration.

This Commission has taken great pains to assure that NSEP be appropriately treated in its regulatory deliberations. More important, however, are the steps we have taken to redefine the FCC's role in the areas of planning and management for NSEP, something you and I have discussed. This redefinition would permit us to focus more properly on our regulatory role.

Our planning role is outlined in Executive Order 11490, the document which assigns emergency preparedness functions to Federal agencies and departments. It generally indicates that the Commission is responsible for developing the plans of our licensees and regulatees for the emergency use of their telecommunications resources.

Our management role generally derives from the redelegation of the President's emergency war powers under section 606 of the act.

These planning and management roles of the FCC were brought most clearly and abruptly into focus with our participation last fall in an exercise with the agencies and departments of the executive branch that had responsibility for emergency telecommunication. In REX-82 BRAVO many things became clear. We believe the FCC acquitted itself quite well, but there were lessons to be learned. The functions of planning for the telecommunications resources in an emergency is a function the FCC should not be performing. The Commission has neither the resources nor the national security emergency preparedness expertise to carry out effectively these functions. We are not military planners. We are not emergency preparedness planners. We are not experts in what the NSEP requirements for telecommunications are or will be in an emergency.

The FCC is more properly a regulatory agency. The FCC should be performing as a regulator of telecommunications in the public interest as specified under the act. We do not even wish to be a conduit to our licensees and regulatees.

In this regard we are pleased to see the President's National Security Telecommunications Advisory Committee, NSTAC, assisting the executive branch in this all-important planning role. In fact, the agenda of the FCC's own advisory committee, NIAC, is being driven largely in the common carrier area by NSTAC concerns.

I would like to turn specifically now to comments on S. 999. The language currently used in S. 999, while very good language, contains a number of ambiguities, some of which were alluded to yesterday in Chairman Fowler's testimony.

To clear up some of these ambiguities while at the same time assuring the fundamental goals of the legislation, we engaged in a series of meetings with General Hilsman and his staff. The recommended statutory language General Hilsman and I have worked out for S. 999 addresses these ambiguities. Our language attempts to specify a process whereby NSEP considerations could be taken into account with changing the regulatory role of the FCC as specified in the Communications Act.

We came to the conclusion that the current language of S. 999 is inadequate and should be replaced with language which would do the following:

The President should have the authority to establish plans and standby arrangements consistent with the FCC's authority to require implementation and regulate carriers. The FCC should have

authority after a public interest determination to require carriers to support the President's plans and address circumstances where voluntary arrangements are not feasible. Voluntary regulatory arrangements to support initiation as well as restoration backup or interconnection may be there when needed.

We believe these changes and the more specific language would help us both accomplish what is a common public interest—the national security of this Nation.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF MIMI WEYFORTH DAWSON, DEFENSE COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Chairman Goldwater and members of the subcommittee. As defense commissioner of the Federal Communications Commission, I welcome this opportunity to comment on those provisions in S. 999 addressing national security and emergency preparedness—or NSEP—communications. In view of the broad structural and competitive changes now underway in the telecommunications industry, we believe that it is appropriate for Congress to clarify and update the Communications Act in order to reflect marketplace changes and advancing government policies.

Before I comment on the NSEP portions of S. 999, I would like to mention briefly some of the recent activities of the FCC in the area of NSEP.

THE FCC ROLE IN NSEP

FCC Chairman Mark Fowler has taken an extraordinary interest in the FCC's NSEP responsibilities—an interest spurred by the many and dramatic changes taking place in the structure of the telecommunications industry and an interest aimed at clarifying the Commission's role in the provision of national security and emergency communications. As part of this renewed commitment to NSEP, the Chairman appointed me as Defense Commissioner nearly a year ago, specifically to bring into clear focus the FCC's responsibilities in this critical area.

And let me briefly highlight the FCC's NSEP responsibilities. Historically, they have fallen into three related areas: regulatory, management, and planning.

FCC REGULATORY RESPONSIBILITIES

As to the regulatory function, in the Communications Act of 1934, Section 1, the FCC's "charter" for NSEP is defined by identifying among the purposes of the act: "the national defense, [and] . . . promoting safety of life and property through the use of wire and radio communications. . . ."

Thus, in the deliberative process of regulating in the public interest "communication by wire and radio," we are reminded that NSEP considerations must be included. This is our most important NSEP responsibility. However, while Congress in 1934 properly included consideration of NSEP factors in the regulatory process, it neglected for the most part to tell us how this might be done; even Section 606 of the Communications Act deals largely with the war powers of the President. But the telecommunications environment has become much too complicated to permit a critical topic such as the role of communications in the survival of this nation to continue to be unspecified and to continue to depend on interpretations that may vary with time. This Commission has taken great pains to assure that NSEP be appropriately treated in its regulatory deliberations along with other policy factors such as competition and deregulation.

FCC PLANNING AND MANAGEMENT RESPONSIBILITIES

More important, however, are the steps that we have taken to redefine the FCC's role in the areas of planning and management for NSEP telecommunications. This redefinition would permit us to focus more properly on our regulatory role.

Our planning role is outlined in Executive Order 11490. This is the document which assigns emergency preparedness functions to federal departments and agencies. It generally indicates that the Commission is responsible for developing the plans of our licensees and other regulatees for the emergency use of their telecommunications resources.

Our management role generally derives from the redelegation of the President's emergency war powers under Section 606 of the Communications Act. This deals with public, non-government needs, including spectrum needs, after an emergency "606" situation is declared. In this process, the NCS represents the needs of the federal government, including but not limited to, military needs. Together, we bear the responsibility for the management of much of the telecommunications resources of this country in an emergency "606" situation.

These planning and management roles of the FCC were brought most clearly and abrutly into focus with our participation last fall in an exercise with the agencies and departments of the executive branch, that had responsibilities for emergency telecommunications. The exercise, called REX-82 BRAVO, was conducted by the Federal Emergency Management Agency with the participation of OSTP, NCS, GSA, and NTIA, to name only a few. The FCC found itself faced with decisions as to satisfying or modifying extraordinary demands, including those of the military on common carrier resources; other decisions dealt with emergency use of the spectrum.

There appears to be one critical lesson from this experience: the function of planning for and management of telecommunications resources in an emergency is a function which the FCC should not be performing. The Commission simply has neither the resources nor the NSEP expertise to carry out effectively these functions. We are not military planners. We are not emergency preparedness planners. we are not experts in what the NSEP requirements for telecommunications are or will be in an emergency,

The FCC is, more properly, a regulatory agency. Our concerns are those of regulators—rate base issues, revenue requirements, for example—where in NSEP needs are blanaced—by us—with other national concerns and policies, such as competition and deregulation.

RECENT FCC ACTIVITIES

The FCC is beginning to deal with those executive departments and agencies with telecommunications responsibilities to find a more effective mechanism to perform these planning an management functions.

One of our most important accomplishments to date has been the definition of the FCC role in this area vis a vis the role of NCS: The NCS should be preforming the planning function; the FCC should be performing a regulator of telecommunications in the public interest as specified in the Communications Act. We do not even wish to be a "conduit" to our licensees and regulates. In this regard, we are pleased to see the President's National Security Telecommunications Advisory Committee (NSTAC) assisting the executive Branch in this all-important planning role. In fact, the agenda of the FCC's own advisory committee, the National Industry Advisory Committee (NIAC) is being driven largely by NSTAC concerns.

Let me describe briefly the work of NIAC. NIAC's role is to provide advice from industry to the FCC in the area of NSEP. Last summer, when it was time to renew NIAC's charter, I decided that the time was appropriate for there to be a new NIAC. Too much has been going on in the world of Communications for NIAC to be routinely renewed and allowed to continue as before. (It has been around since 1958.) In light of the Second Computer Inquiry Decision, the divestiture and reognization of AT&T, increased deregulation and competition, and, of course, the rapid advances in technology, I decided that NIAC must be restructured and restrengthend. Of course, one of the most compelling forces in this current environment is the significantly increased role and activity of the NCS and NSTAC. In order for the FCC to be a strong partner implementing the NSEP plans and recommendations developed by the NSTAC, NIAC has to be restructured and strengthened.

Now that this has taken place, we are in the process of undertaking a close regulatory review of some of the initiative that are currently being examined by NSTAC. These deal with concepts for coordinating among carriers in an emergency and with special fixes to increase the survivability of our commercial communication satellites. The activities ot NIAC, in conjunction with NSTAC, are being carried out according to a Memorandum of Understanding between the FCC and the NCS. This MOU is yet another indication of the cooperation between the FCC and the NCS in the area of common concern. The FCC is very proud of this MOU and what it signifies.

COMMENTS ON S. 999

Now I would like to turn to our specific comments on S. 999.

As Chairman Fowler testified yesterday, we believe that the NSEP provisions of S. 999 point toward some laudable goals. For instance, the bill would underscore the status of NSEP as an important part of the Commission's overall statutory responsibility; it would assure that the Commission consider, as a part of its detemination to revise, reduce or eliminate rules and regulations, potentially significant adverse effects on NSEP. And it would emphasize the desirability of the creation of NSEP communications plans with maximum reliance upon the private sector.

At the same time, however, the language currently used in S. 999 contains a number of ambiguities—some of which were alluded to yesterday in Chairman Fowler's testimony. To use an example, while section 707(a) of the current bill authorizes the President to establish an NSEP plan, the bill as drafted does not indicate how such a plan might be implemented consistent with the public interest framework of the Communications Act.

To clear up some of these ambiguities while at the same time assuring the fundmental goals of the legislation, we engaged in a series of meetings with General Hilsman's staff. The recommended statutory language that General Hilsman and I have worked out for S. 999 addresses these ambiguities. Our language attempts to specify a process whereby NSEP considerations would be taken into account without changing the role of the FCC in NSEP as specified in the Commnications Act of 1934 or without taking away from or changing any of its authority to deal with the regulatory aspects of NSEP. It simply instructs us as to how we might do it.

We came to the conclusion that the current language of S. 999 is inadequate and that it should be replaced with language which would do the following:

(1) Authorize the President to establish a program to ensure the availability, continuity and prompt initiation or restoration of communications services and to provide for the continuity and prompt initiation or restoration of communications essential to NSEP. Such language should delineate between the role of the executive agencies as NSEP planners and the regulatory role—not an NSEP planning role—of the FCC. Quite simply, the FCC shoud be out and stay out of NSEP planning.

(2) In accordance with this plan, authorize the President to require any federal agency—other than the FCC in the exercise of its regulatory responsibilities—and request any carrier or other person, to establish and maintain facilities and plans or arrangements for the mutual backup, restoration and interconnection of their communications services, facilities and equipment, including customer-premises equipment, inside wiring and enhanced services.

(3) Authorize the President to request carriers and other persons to engage in joint planning meetings. These planning meetings would be conducted pursuant to *procedures* adopted with the concurrence of the FCC and the Attorney General.

(4) Authorize the President to appoint an advisory committee to look at the structure, policy and needs of NSEP communications as well as to provide technical advice and advice regarding the implementation of improvements in NSEP communications.

(5) With specific regard to the FCC, the legislation should authorize the FCC—upon a public interest determination to:

(a) require carriers or others to engage in the joint planning meetings requested by the President and mentioned above;

(b) adopt regulations to provide for priorities in the initiation or restoration of communications services, including enhanced services;

(c) adopt regulations or orders to set out procedures, technical standards or other requirements, including interim compensation, in order to provide for the mutual backup, restoration, or interconnection of communications services. This would take place essentially after the President or the Commission certified that voluntary arrangements were unlikely and that involuntary arrangements would not unreasonably confer a competitive advantage on any carrier or retard the introduction of new or lower cost technologies or services;

(d) establish and enforce such minimum uniform technical standards as are necessary to support NSEP for customer-premises equipment and inside-wiring and their interconnection;

(e) meet the communications requirements from any telecommunications emergency, authorize or require any carrier, its subsidiary or affiliate or any other person, to cooperate with any person or other entity to provide facilities, services customer-premises equipment or inside-wiring, on an individual or joint basis;

(f) perform an arbitrational role by establishing appropriate financial terms, conditions and charges for an NSEP plans, facilities, services, equipment, wiring or modifications thereto, provided by any carrier or any person in these instances when such carrier or person and the President or his designee cannot agree on those terms, conditions or charges;

(g) review and reallocate any revenue received by such carrier, its subsidiary or affiliate, for NSEP services. And this should take place nothwithstanding any agreement between the President or his designee and any carrier, its subsidiary or affiliate, regarding financial terms, conditions and charges.

Of course, this is a brief outline of the possible changes to the NSEP section of S. 999. But they represent a giant step toward clarifying the appropriate NSEP planning function of the executive and limiting the FCC's role to its usual and appropriate regulatory function.

The Committee should also be aware of a potential controversy that relates to a proposed grant of limited Commission authority over otherwise unregulated enhanced services. As the Committee is aware, in view of the merging of data processing and communications technology, sophisticated users of communications such as the Department of Defense are relying increasingly on enhanced services for communications-like requirements. The new working draft would grant the President authority to seek volunteer NSEP participation by providers of enhanced services. It also would authorize the Commission to adopt regulations granting priority to the initiation or restoration of enhanced services.

In sum, I welcome the national defense and emergency prepardedness provisions of S. 999, although some of the language is ambiguous. The new draft language not only attempts to cure these ambiguities but also creates a brighter line between the proper role of the Federal Communications Commission *vis a vis* that of the Department of Defense in the planning for an effective telecommunications network.

Thank you.

Senator GOLDWATER. Thank you very much.

Of course, I may be hindered by remembering the Presidential powers he has exercised before, but I think it is becoming increasingly evident that the communications family is going to require some kind of congressional direction short of legislative help.

I have always believed that if we get into a national emergency, the Commander in Chief has the power to pull the switch, and that is it. But we have to remember that in the last major emergency we did not have television. We did not have families who could not live without television or radio. That is growing more and more true.

I am going to have my staff set up very early hearings. I have asked the White House to help us on this, and like a lot of White House requests, they get tossed out the window or they do not answer. So I can promise both of you there will be hearings, and they will be held as quickly as we can put them together to find out first what it is that you feel and the rest of the communications family feels we should be looking at.

I do not want to see this thing become so complicated that its own complication will prevent the military from operating the way it should or the civilian branch from providing whatever communications which might be proper.

Frankly, I do not see any great problem in reaching some consensus on how this is going to operate, because we have to keep in mind one thing: When there is a national emergency, we can forget about television in homes, we can forget about radio in the homes. The important thing is that the communication facilities of this country operate in the best interest of the solution of the problem we find ourselves in.

I think we are going to grow some day to regret the fact that AT&T was broken up. I think this may become a major disaster. Although I am not exactly in love with AT&T right now, it was the most reliable communications system in the world, and I am looking at this with some apprehension.

Now, with that short statement so that you will know pretty much where I sit as an old communicator, this is for either one or both of you to answer.

One of my major concerns is that perhaps we are establishing an unnecessary bureaucracy. Does not the President today, in your opinion, as in the past have the existing authority to require planning and coordination, and if so, why are these provisions necessary?

Do not argue about it. Just go ahead.

General HILSMAN. He really does not today, Senator, until you go into the 606, when you really have the emergency 606 calls for; and we have not had that ever. That goes back to the 1934 Communications Act. He does have some authorities under that. We have never had it. So all of the emergencies we have to deal with today, he does not have those kinds of powers.

Senator GOLDWATER. Are you sure of that?

General HILSMAN. Yes, sir. You can bring all the lawyers in all across and the FCC. For 3 years I have been saying that cannot be. I cannot believe that that is where this Nation is. But I am telling you that is where it is, sir.

Senator GOLDWATER. He is the Commander in Chief. By God, if he says right face, that is what you do.

General HILSMAN. Oh, I am going to do that.

Senator GOLDWATER. I am talking about everybody.

General HILSMAN. I hope so, but he does not have that authority.

Senator GOLDWATER. Do you believe that?

General HILSMAN. You had better believe I will do right face if he does that, Senator.

Senator GOLDWATER. Well, you have one more star than I have, so I am going to say yes, sir; but I am going to look into it.

Go ahead. Is that all?

General HILSMAN. I am just answering your question. What we have had to do in the past is we have had a consortium of folks. The FCC has responsibilities in it. The Office of Science and Technology Policy has responsibilities. The National Security Council has responsibilities.

Ms. DAWSON. Mr. Chairman.

Senator GOLDWATER. What do you think about it?

Ms. DAWSON. I think that basically the Communications Act gives the Commission the authority to do those things on behalf of the President in an emergency. I think the problem we have had is a lack of clarity about how we are going to operate without the 500-pound gorilla. That has been a problem for us.

The second problem is: How do we function in a pre-606 environment? Everyone knows clearly what to do in a 606 case, but just as we experienced in our last exercise, when we are talking about terrorism, those kinds of events with long periods of international tension as opposed to a nuclear situation, we do not have any authority to move and act. We believe the FCC would be able to order carriers, but from our point of view, we think it makes better sense if we have a clear definition of roles.

Right now when we are in those very vague situations, the FCC ends up creating, as we have with NCS, two or three memoranda of understanding that say in an emergency you may go to a carrier,

and we will review your action afterward to see if it was in the public interest.

Well, it seems to me that kind of "ad hocery" is not in the national interest.

Senator GOLDWATER. You see, one of the major problems that bumps around in my mind is the type of confusion that historically these kinds of situations have brought about when we think, well, the answer is to establish a commission or an agency, a new one. I can even see a hearing on this subject becoming a very involved, complicated affair.

That is my chief worry. We are going to hold these hearings, but I want to have you folks help my staff reach some decision on the outline of what you think you can work with.

This sounds bad, but this is a case where you do not have to pay a lot of attention to the public. I am talking about a national emergency, and you have more problems than we are going to be able to solve. We have not yet solved the nuclear effects of a nuclear device 200 miles above our country. We do not know what kind of signals we would have left. I think those are things you have to come up with to some extent.

So this to me is a national emergency type of thing that we may not be able to solve. But I know that you folks want our help, and we will try to give it to you; but do not come down here expecting a lot of miracles. I have been around this Government too long to believe it can do a damned thing.

Ms. DAWSON. Mr. Chairman, in my view there have been six agencies of Government who have been meeting over the last month or two to sort out just what you are talking about. There are too many ad hoc committees, commissions, study groups, and everything else. And what we are trying to do is get rid of those that are not needed.

The reason they are there is that people sense the vacuum. No one knows specifically what his authority is and what he should be doing. And what General Hilsman and I are working to say is: Let us get rid of all of these groups and give the one group that in my mind should have that authority, the authority to do it, and let us get the FCC out of planning and put it back in its rightful role.

Senator GOLDWATER. So you two have worked it all out?

Ms. DAWSON. We believe we have worked out a great deal, and if it were put in language, the next administration could not have a different interpretation.

Senator GOLDWATER. Do you remember when you talked to me and sat down and wrote a letter to the White House?

Ms. DAWSON. Yes, I remember.

Senator GOLDWATER. It may be our bad postal service, but I have never gotten an answer.

Ms. DAWSON. Maybe it was I, Mr. Chairman.

General HILSMAN. We have good timing right now, Senator. Those of us who are in the business today are meeting all of the time trying to work out just what you have asked for. There is a will today to do it.

Let me say that again. There is a will today to do it from two parts: inside the Government but also outside. When we have the meetings of the President's National Security Telecommunications

Advisory Committee, those industry entities have put up a lot of effort, time, and resources into working on the problem with us. We have some good timing working for us right now, and I think we will be able to answer your question very quickly.

Senator GOLDWATER. All right. Well, the critical issue for you both seems to be that what is needed is authority to require carriers to plan for effective emergency communications on an industrywide basis. What happens today? Is not that planning among carriers taking place today under Government auspices?

General HILSMAN. Yes, sir, it is, but we are getting questions. There are antitrust questions floating around the left side and the right side. We are doing it. We have to do it today because the Nation needs it, but we are getting those questions, and we are getting those tics, and you know it.

Senator GOLDWATER. In a national emergency go out the window.

General HILSMAN. That is right. But if we have not planned before that emergency to meet that emergency.

Senator GOLDWATER. All right. I am not really arguing with you.

General HILSMAN. I know that.

Senator GOLDWATER. I remember when they told me to get off the air, and I am just a little old amateur. I got mad at them and went on duty instead.

I do not think we have any other questions. We could sit here and talk about this forever. I admire your candor, General, and Ms. Dawson, I admire your candor, as I always have. And we are going to let you know very shortly. I would like to have these hearings set up probably within the month or within the next 6 weeks, because we do have a period of official time when we do not do anything official. Unofficially, we do not do anything all the time, but we have to change that a bit.

Thank you very much for being here, both of you, and I will see you sometime.

Ms. DAWSON. Thank you.

General HILSMAN. Thank you, sir.

Senator GOLDWATER. Thank you.

Now we have our next panel. I am going to move one member of the next panel to the third panel.

I will ask Mr. William Demory, Assistant Bureau Chief for International, the Common Carrier Bureau; Mr. Richard Nichols, vice president of AT&T Long Lines; Mr. Eugene Murphy, chairman of RCA Global Communications; Mr. Howard White, executive vice president and general counsel, U.S. Telephone & Telegraph Corp.; and Mr. V. Orville Wright, president and chief operating officer, MCI Communications Corp.

Gentlemen, you may sit down, and I think we will start in the corner with Mr. Wright, and we will go from right to left.

STATEMENTS OF V. ORVILLE WRIGHT, PRESIDENT AND CHIEF OPERATING OFFICER, MCI COMMUNICATIONS CORP.; HOWARD A. WHITE, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, U.S. TELEPHONE & TELEGRAPH CORP.; WILLARD DEMORY, ASSISTANT BUREAU CHIEF FOR INTERNATIONAL, THE COMMON CARRIER BUREAU, FEDERAL COMMUNICATIONS COMMISSION; RICHARD B. NICHOLS, VICE PRESIDENT, AT&T LONG LINES; AND EUGENE F. MURPHY, CHAIRMAN, RCA GLOBAL COMMUNICATIONS, INC.

Mr. WRIGHT. Thank you, Mr. Chairman.

I am Orville Wright, president and chief operating officer of MCI Communications Corp.

Since this subcommittee's international hearings last year, MCI has become a full-fledged international as well as domestic carrier. We have acquired Western Union International, one of the major international record carriers. We have opened at reduced rates private line telephone service to the United Kingdom and Belgium, and we have commenced public message telephone service to Canada. Later this year we expect to announce additional expansion by MCI into the international telephone market.

The enactment of your legislation will facilitate the development of a competitive international marketplace. I would really like to speak to four points in relation to S. 999.

First, the U.S. procompetitive policy must be explicit. Legislation such as S. 999 will foster competition in the international sector. By declaring marketplace competition to be the policy of the United States in the international field, Congress will be transmitting a clear signal to the rest of the world that our Government at its highest levels endorses multiple suppliers of all international services between the United States and other countries.

There is no valid reason why AT&T should monopolize message telephone service between the U.S. mainland and overseas points. MCI intends to bring the benefits of message telephone competition to the international market, and the endorsement of competition in this legislation will help.

The second point, premature deregulation of dominant carriers will retard competition. The reduction and elimination of unnecessary Government regulation will indeed encourage market entry and foster competition. However, the premature deregulation of dominant carriers is likely to have the opposite effect. If monopoly based international carriers such as AT&T and Comsat are deregulated, they could defeat the procompetitive goals of S. 999.

We are concerned that some of the provisions of S. 999 might have the unintended result of a premature deregulation of dominant carriers. MCI will submit clarifying language on this point to your staff.

Third, segmentation of the domestic and international services will increase regulation and restrict competition. In a well-intentioned endeavor to promote interconnection between carriers, section 606(b) of S. 999 requires carriers to segment their respective domestic and international services and to accord nonaffiliated carriers equal interconnections to each of their respective segments.

The statutory language has been lifted from the Record Carrier Competition Act of 1981. However, the FCC has been interpreting the identical language in the 1981 act in a fashion that has resulted in increased regulation and reduced competition. For example, enhanced services which are no longer considered to be jurisdictional common carrier services by the FCC remain fully regulated under the FCC construction of the 1981 Record Carrier Act. Thus, MCI's effort to introduce competition into the international record service market are being hampered by the FCC's interpretation of the identical statutory provision which is now being considered for inclusion in S. 999. Accordingly, MCI strongly recommends the deletion of section 606(b) from S. 999.

The fourth point, cost-based access to international access is in the public interest. The international carriers are forced, unfairly we submit, to pay Comsat approximately a 9-percent markup on Intelsat's charges for satellite facilities. We understand from your statements in the Congressional Record of April 7 when S. 999 was introduced that this bill recognizes that carriers should be granted cost-based access to monopoly facilities. We understand that is also the intent of 606(a)(3), to provide cost-based access. However, to avoid future litigation, the cost-based access provisions of this bill should be made more explicit. And I would like the approval to submit clarifying language to the subcommittee staff for that purpose.

Senator GOLDWATER. We would welcome it.

Mr. WRIGHT. In conclusion, MCI supports the International Telecommunications Act of 1983 and urges its enactment promptly.

Thank you.

[The statement follows:]

STATEMENT OF V. ORVILLE WRIGHT, PRESIDENT AND CHIEF OPERATING OFFICER, MCI COMMUNICATIONS CORP.

Mr. Chairman, I am V. Orville Wright, President and Chief Operating Officer, MCI Communications Corporation. I am pleased to have the opportunity to endorse the International Telecommunications Act of 1983.

MCI IS NOW A FULL-FLEDGED INTERNATIONAL CARRIER

MCI is now a full-fledged international, as well as a domestic, carrier. When Bill McGowan, our Chairman, appeared before you in June 1982 to testify in favor of your proposed S. 2469, the International Telecommunications Act of 1982, he stated that: "MCI is now on the threshold of extending its competitiveness and innovation into the international telecommunications markets." I can now report, Mr. Chairman, that MCI has crossed that threshold. We now intend to pioneer competition in the international market, as we have done domestically.

In mid-1982, we consummated the acquisition of Western Union International, Inc. (WUI), one of the major international record carriers. Early this year, we launched our entry into the international voice market by opening private line voice service to the United Kingdom and Belgium. In April 1983, we commenced public message telephone service to Canada. Later this year, we expect to announce additional expansion by MCI into the international telephone market.

MCI has now organized its international activities by forming MCI International, Inc., which will operate in the traditional international record market through the long-established WUI and in the international voice market through the newly established MCI International Telecommunications Corporation (MCI Intelcom).

PROMOTION OF INTERNATIONAL COMPETITION WILL BE BENEFICIAL

S. 999 will foster competition in the international sector. By declaring marketplace competition to be the policy of the United States in the international telecom-

munications arena, as S.999 does, Congress would be transmitting a clear signal to the rest of the world that our Government—at its highest levels—endorses multiple suppliers of all international services originating and terminating within the United States. Experience in our domestic section has shown that consumers benefit from competition in the form of lower costs, operating efficiencies, and service and technological innovations. These benefits should now be extended into the international marketplace.

Successful international telecommunications is founded upon international comity. Services are provided by U.S. carriers in partnership with their correspondents, the overseas administrations and recognized private operating agencies. Although most other countries each rely upon a single telcommunications operating entity, their structures are compatible with multiple carriers at the U.S. end of the telcommunications circuits.

MCI's subsidiary, WUI, and the other international record carriers operate as multiple, competitive U.S. carriers with single correspondents abroad. There is no valid reason why AT&T should totally monopolize message telephone service between the U.S. Mainland and overseas points.

MCI intends to bring the benefits of message telephone competition to the overseas market. The enactment of S. 999 will further our efforts and will promote international competition.

PREMATURE DEREGULATION OF DOMINANT CARRIERS WILL RETARD COMPETITION

A fully competitive international marketplace, and not deregulation for its own sake, is the goal of S. 999 as we understand the bill. In furtherance of its procompetitive goals, S. 999 wisely states the policy "to reduce and eliminate unnecessary regulation and to encourage entry by new carriers into the international telecommunications marketplace."

Although the reduction and elimination of unnecessary regulation will, indeed, encourage market entry and foster competition, the premature deregulation of dominant carriers is likely to have the opposite effect. If monopoly-based international carriers, such as AT&T and Comsat, are deregulated, they could engage in anticompetitive conduct—such as cross-subsidization and predatory pricing—and, thereby, defeat the procompetitive goals of S. 999.

Premature deregulation of dominant carriers could perpetuate existing international monopolies. In order to avoid this undesirable result, which would be contrary to the goals of S. 999, several clarifications to the bill are necessary.

Section 605(b), as we understand it, sets a one-year deadline for the FCC to determine which international services should continue to be regulated. If the FCC were to miss this deadline, with respect to any or all international services, they would automatically be deregulated pursuant to Section 605(C)(1). Thus, the bill could lead to deregulation by default, an undesirable result.

Sections 604 and 605 both appear to contemplate regulation or deregulation, as the case may be, on a service-by-service basis without regard to the disparities in the market power among the carriers rendering a given service. Thus, even though one carrier might dominate 99% of a given service and the remaining one percent might be divided among several nondominant carriers, the entire service would either be regulated or deregulated. Any such indiscriminate treatment of disparate carriers is likely to discourage new entrants and to further entrench the dominating carrier. The logical approach would be to deregulate the nondominant carriers, while continuing to regulate the dominant carriers until, in time, truly effective competition has developed.

The foregoing sections can be clarified to make them consistent with the procompetitive goals of S. 999. MCI will propose clarifying language to the Subcommittee staff.

SEGMENTATION OF DOMESTIC AND INTERNATIONAL SERVICES WILL INCREASE REGULATION AND RESTRICT COMPETITION

In a well-intentioned endeavor to promote interconnection between carriers, S. 999 contains a provision in Section 606(b) requiring carriers to segment their respective domestic and international services and to accord nonaffiliated carriers equal interconnection to each of their respective segments. The language of this interconnection provision is identical with Section 222(c)(1)(B) of the Record Carrier Competition Act of 1981. Indeed, MCI and other carriers suggested the inclusion of this provision during the Subcommittee's hearings last year on S. 2469.

However, subsequent to your 1982 hearings, the FCC has interpreted the identical language in the Record Carrier Competition Act to require increased, rather than

relaxed, regulation. By its order of March 14, 1983, the FCC held that otherwise unregulated enhanced services must be regulated because of the identical segmentation provision in the Record Carrier Competiton Act. Thus, the FCC has adopted a position (subject to pending petitions for reconsideration filed by MCI and others) that might compel it to increase the scope of its regulation of international voice and high-speed data services if S. 999 is enacted in its present form. Apparently, the FCC believes that it is compelled by the Record Carrier Competition Act to regulate in areas where it would not otherwise be disposed to do so. The FCC might welcome a clarification of this 1981 Act so that it could reduce its regulation in the record carrier field.

Additionally, other FCC Orders, based upon the segmentation provision of the Record Carrier Competition Act, have either resulted in the rejection of MCI's innovative reduced-rate proposals, or have cast doubt over their continuation. Thus, MCI's efforts to introduce competiton into the international record service market are being hampered by FCC interpretations of the identical statutory provision which is now being considered for inclusion within S. 999.

Section 606(b), the segmentation provision, might also be at cross-purposes with the "essential" policy, in Section 2(3) of S. 999, "to encourage the entry of new carriers in the offering of international telecommunications services and facilities." Under the FCC's present interpretation of the identical provision in the Record Carrier Competition Act, new carriers could not offer innovative pricing without extending it to the subscribers of interconnected carriers. In other words, MCI's concept of competition, which has set it apart from other carriers and has served it and its subscribers so well domestically, would be surpressed internationally. This penalty against innovation would benefit the entrenched carriers by enabling them to advise the overseas administrations that all U.S. subscribers could be served under the same terms and conditions by using the interconnected overseas lines of these entrenched carriers. Thus, there would be far less incentive for overseas administrations to enter into operating agreements with new U.S. carriers. Unless a carrier has direct operations with overseas administrations, it would not be able to participate in return traffic, which is often more profitable than traffic outbound from the U.S.

Accordingly, MCI strongly recommends the deletion of Section 606(b) from S.999. The remaining interconnection provisions in Section 606(a) and (c) of S.999 and in the existing Section 201(a) of the Communications Act of 1934 should suffice to provide for interconnection between carriers.

COST-BASED ACCESS TO INTERNATIONAL SATELLITES IS IN THE PUBLIC INTEREST

When S.999 was introduced on April 7, 1983, Senator Goldwater stated:

"This measure recognizes that carriers should be granted access to monoply facilities at rates based on cost. It anticipates that the Federal Communications Commission will develop appropriate procedures to address the issue of cost-based access to monoply facilities." (129 Cong. Rec. S.4274).

We believe that Senator Goldwater was referring, in the above-quoted statement, to cost-based access to Intelsat satellite facilities. We agree with Senator Goldwater that such access should be legislated to confirm the FCC's jurisdiction in this regard. Although MCI believes that the FCC is empowered under the Communications Satellite Act of 1962, to grant cost-based access, Comsat has argued strongly to the contrary. Indeed, Comsat has been contending in a pending FCC case that its markup of Intelsat rates (which approximates a 90% increase over Intelsat's charges) is proper, and that the international carriers are not lawfully entitled to cost-based access.

Accordingly, S.999 should clearly state that the FCC is directed to accord the international carriers cost-based access to Intelsat facilities. We understand that the intent of Section 606(a)(3) is to provide for such access. However, MCI recommends that cost-based access be made more explicit by means of a specific amendment to the Communications Satellite Act of 1962. MCI will propose specific language to the Subcommittee Staff.

INTERNATIONAL TELECOMMUNICATIONS AND INFORMATION COORDINATION ACT OF 1983

MCI fully agrees with the objectives of S.999 to improve the coordination of U.S. international telecommunications and information policies; to ensure the effective representation of U.S. interests in international forums; and to promote a strong, competitive U.S. international telecommunications industry.

The legislation would accomplish these objectives by means of the establishment within the Executive Office of the President of the Office of Special Representative

for Telecommunications and Information. The Special Representative would coordinate the development of U.S. telecommunications policy, would represent the U.S. at international telecommunications conferences, and would chair the intergovernmental task force which would be established by S.999.

There are other pending proposals to reorganize the Federal Government for the more effective promotion of international trade, commerce, telecommunications, and information transfer. Included among these proposals are the establishment of a new cabinet-level Department of Trade.

All of these proposals merit careful analysis and serious consideration. We hope that Congress focuses upon them, and takes prompt legislative action to achieve the commendable objectives of the International Telecommunications and Information Coordination Act of 1983.

CONCLUSION

It is timely and appropriate, Mr. Chairman, to adopt a U.S. international telecommunications policy to attain the goals, stated so well in S.999, of the promotion of a strong, competitive U.S. telecommunications industry, of the effective exercise of U.S. leadership in evolving global telecommunications policies for the benefit of the public, and of the ultimate substitution of marketplace competition for government regulation as conditions warrant.

The International Telecommunications Act of 1983, with the clarifications mentioned above in this statement, would be well designed to attain these goals. Therefore, MCI is pleased to endorse this bill.

[The following information was subsequently received for the record:]

JUNE 9, 1983.

Re: S. 999.

Hon. BARRY GOLDWATER,
Chairman, Subcommittee on Communications, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I appreciated the opportunity to present MCI's views on S. 999 and hope that my testimony will be helpful to you and your staff.

As indicated in my testimony, MCI favors several clarifications to S. 999 in order to achieve the commendable goals of this bill. These clarifications in the form of suggested statutory language are enclosed.

Please be assured that MCI will assist you and your staff in every way possible.

Sincerely,

V. ORVILLE WRIGHT.

Enclosures.

MCI SUGGESTED AMENDMENTS TO S. 999

EFFECTIVE COMPETITION

Amend Section 603(a) of the International Telecommunications Act of 1983 to read as follows (additions shown by underscoring, deletions shown by black brackets):

"AUTHORITY OF THE COMMISSION"

"SEC. 603. (a) The Commission shall exercise only so much of the powers conferred upon it under this Act as is essential to the purposes of this title. The Commission shall revise, reduce, or eliminate any rule or regulation prescribed pursuant to this Act, [and exempt any person in whole or in part from the requirements of this Act with respect to any international telecommunications service or any carrier operating in any market or a geographic area] as *effective* competition develops unless such revision, reduction, or elimination thereof may result in a significant adverse impact upon the national defense and security or emergency preparedness or upon the economic competitiveness and viability of United States suppliers of telecommunications equipment and international telecommunications services relative to competing foreign suppliers and their United States affiliates."

Reasons: We propose the above-dashed deletions from Section 603(a) because the degree of regulation applicable to each carrier is covered more explicitly by Section 604. The overall context of Section 603(a) involves rules and regulations rather than persons or carriers.

In its statement of policy in Section 602(a), S. 999 clearly is striving for *effective*, not merely token, competition. In order to carry these objectives forward into the provision dealing with the authority of the Commission, we propose the above-underscored addition to Section 603(a) of S. 999.

CLASSIFICATION OF CARRIERS

Delete Sections 604 and 605 of the International Telecommunications Act of 1983, and replace them with a new Section 604 to read as follows: "(a) The Commission shall classify international common carriers according to the degree of regulation necessary for each carrier in order to foster the development of effective competition, the entry of new carriers into the international marketplace, and the other policies of this Act. In making such classifications, the Commission shall consider each international carrier's share of the relevant markets, the market power of each carrier to establish and maintain prices notwithstanding the prices of its competitors, relative overall financial resources, relative number of customers, number of carriers in the relevant markets, and other relevant factors. "(b) The Commission shall review such classifications at least once every two years in order to promote the policies of this Act."

Reasons: Premature deregulation of dominant carriers could perpetuate existing international monopolies and, thus, defeat the objectives of S. 999 to attain effective competition and market entry by new carriers.

Sections 604 and 605 of S. 999 appear to contemplate regulation or deregulation, as the case may be, on a service-by-service basis without regard to the disparities in the market power among the carriers rendering a given service. Thus, even though one carrir might dominate 99 percent of a given service and the remaining one percent might be divided among several nondominant carriers, the entire service would either be regulated or deregulated. Any such indiscriminate treatment of disparate carriers is likely to discourage new entrants and to further entrench the dominating carrier. The logical approach would be to deregulate the nondominant carriers, while continuing to regulate the dominant carriers until, in time, truly effective competition has developed.

Section 605(b) sets a one-year deadline for the FCC to determine which international services should continue to be regulated. If the FCC were to miss this deadline with respect to any or all international services, they would automatically be deregulated pursuant to Section 605(c)(1). Thus, the bill could lead to deregulation by default, an undesirable result.

The above-proposed new Section 604 would confer more flexibility upon the FCC and, at the same time, give it guidance in its classification of international carriers.

DELETION OF SEGMENTATION PROVISION

Delete Section 606(b) of the International Telecommunications Act of 1983, relating to the segmentation of domestic and international services, and redesignate the last subsection as "(c)" instead of "(b)".

Reasons: Section 606(b) is identical with Section 222(c)(1)(B) of the Record Carrier Competition Act of 1981. However, the FCC apparently believes that it is compelled by this segmentation provision of the Record Carrier Competition Act to regulate in areas where it would not otherwise be disposed to do so. For example, by its order of March 14, 1983, the FCC held that otherwise unregulated enhanced service must be regulated because of the segmentation provision of the Record Carrier Competition Act. The FCC took this regulation-oriented position notwithstanding that the Record Carrier Competition Act instructed the agency to forebear from exercising its authority "as the development of competition among record carriers reduces the degree of regulation necessary to protect the public" [Section 222(b)(1)].

Thus, the FCC has adopted a position that might compel it to increase the scope of its regulation if Section 606(b) remains in S. 999. Accordingly, the deletion of this segmentation provision is recommended.

COST-BASED ACCESS TO INTELSAT

Section 201(c)(1) of the Communication Satellite Act of 1962 is amended by changing the semi-colon to a period, and by adding at the end thereof the following: "In insuring that all authorized carries shall have equitable access to the communications satellite system, the Commission shall provide that each such carrier may obtain such access by payment to the corporation of the equivalent of the cost of the appropriate unit of utilization that the corporation is charged by the International Telecommunications Satellite Organization, plus an appropriately allocated portion

of the reasonable and verifiable costs incurred by the corporation in performing its functions under this Act with respect to such Organization."

Reasons: We understand that the intent of Section 606(a)(3) of S. 999 is to provide for cost-based access by the carriers to Intelsat facilities. When S. 999 was introduced, Senator Goldwater stated that this "measure recognizes that carriers be granted access to monopoly facilities at rates based on cost" (129 Cong. Rec. S4274). However, S. 999 did not follow its otherwise consistent pattern of amending the Satellite Act when changes to that Act were intended. Instead, Section 606(a)(3) of S. 999 amends the Communications Act of 1934, and even then, the specific language of this Section is in terms of "interconnection" rather than of "access," the term of art used in the Satellite Act.

Accordingly, S. 999 should explicitly state that the FCC is directed to accord the carriers cost-based access to Intelsat facilities. Our above-proposed amendment is explicit in this regard. It also makes clear that Comsat is entitled to recover its "reasonable and verifiable costs" for the functions it performs in interfacing with Intelsat.

CARRIERS CAN CONTINUE TO OBTAIN SPACE-SEGMENT SERVICES FROM COMSAT

Section 305(b)(4) of the Communication Satellite Act of 1962 is amended as follows (additions shown by underscoring): "to contract *with authorized carriers and* with authorized users, including the United States Government, for the services of the communications satellite system; and"

Reasons: S. 999 adds a definition of an "authorized user" which expressly excludes an "authorized carrier." Although this definition was intended to enable the FCC to authorize Comsat to serve the public directly, this definition might have the unintended result of depriving the carriers of their existing statutory right to contract with Comsat for the services of the satellite system [which is defined to mean the space segment only, by Section 103(1)]. If the FCC were to authorize the carriers to own their own earth stations, the carriers might be deprived of their existing valuable rights to obtain the space segment services from Comsat, unless the above-quoted amendment to Section 305(b)(4) is inserted. This proposed amendment will not adversely affect the rights of the public in any manner.

Senator GOLDWATER. Thank you, Mr. Wright.

Mr. White.

Mr. WHITE. Thank you, Mr. Chairman. I appreciate this opportunity to appear on behalf of ITT's communications and information services companies.

Last year I complained that "* * * S. 2469 failed to deal with the bottlenecked facilities of AT&T and Comsat over essential cable and satellite facilities." But we did recognize improvements in the version of S. 2469 which was passed by the Commerce Committee last year. And we are now pleased to acknowledge that S. 999 shows even more attention to the realities of the existing environment in international telecommunications. Accordingly, ITT's suggestions for improvement of S. 999 are offered with a view toward strengthening the statutory means to achieve your well-designed goals.

Relatively small changes are needed to assure that AT&T and Comsat international-facility advantages do not constitute bottlenecks which inhibit development of full competition among U.S. carriers.

First, S. 999 should make it absolutely clear that all carriers can share in the economies of scale that ownership of high-capacity international cable and satellite systems confer. Second, Comsat must not be allowed to use its relationship with Intelsat as a competitive advantage.

There is no question that section 606 provisions dealing with interconnection go a long way toward setting up a structure under which small, competitive carriers could compete with AT&T and

Comsat. The requirement that interconnection charges, terms and conditions be based upon cost is reasonable, and if fairly administered will benefit competition.

To the extent that S. 999 language requiring separate treatment of domestic and international carrier service actually means separate treatment of the domestic and international segments of international services, such provision should help to minimize predatory pricing actions by the monopoly carriers.

With respect to AT&T, we note it has controlling U.S. interest in all international cable facilities landing on the U.S. mainland, as well as virtually all of the international telephone services market. The cost of cable facilities reflects major economies of scale. Thus, only AT&T with its monopoly of international telephone services has enough traffic to justify building its own cables. In most circumstances international record carriers or potential new providers of international voice services could not justify the investments which would be required for competing cable systems.

This situation could change over time as the voice market opens to competition in some countries and as other carriers make inroads on AT&T's dominant position; but this is not going to happen any time soon. Therefore, S. 999 should provide that other carriers shall retain their rights to obtain ownership, indefeasible right of user, or cost-based lease interests in high capacity cable facilities, rather than being relegated to construction of their own cables at prohibitive costs.

Turning to Comsat, we note that Intelsat facilities constitute a serious bottleneck because U.S. carriers must rely on Comsat for access from the United States to such facilities. Indeed, using its monopoly position as the U.S. representative to Intelsat, Comsat is able to lease space segment capacity from Intelsat at a rate about half the sum U.S. carriers must pay to obtain the same capacity from Comsat. Although S. 999 would permit the FCC to approve a competing satellite system, it may be years before a viable alternative to the Intelsat system is operational.

Comsat should not be permitted to retain an entrenched monopoly indefinitely while also being permitted to expand into competitive markets. If Comsat wishes to retain its monopoly, it should forego such expansion. Conversely, if Congress or the FCC wishes to permit such Comsat expansion, the time has also come to terminate Comsat's role as U.S. signatory to Intelsat and Inmarsat and to transfer the signatory function to the State Department or the proposed Special Representative for Telecommunications and Information.

In short, ITT believes that S. 999 should allow any carrier to deal with Intelsat directly, or at least make it absolutely clear that interconnection based upon cost means that Comsat must offer its space segment facilities to other carriers at rates which are no higher than Intelsat's charges therefor.

On the subject of Government reorganization, ITT agrees that U.S. participation in international telecommunications markets should be more effective, with better coordination of U.S. Government policy. The structure proposed in S. 999 seems reasonable, and we endorse the task force approach.

Mr. Chairman, with the addition of ITT's suggestions that AT&T continue to allow other carriers to participate in high-capacity cable systems and a modification of Comsat's role in satellite services and/or facilities, S. 999 would be a good and substantial updating of the laws pertaining to international telecommunications.

Thank you.

[The statement follows:]

STATEMENT OF HOWARD A. WHITE, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, U.S. TELEPHONE & TELEGRAPH CORP. (ITT)

Mr. Chairman, as Executive Vice President and General Counsel of the U.S. Telephone and Telegraph Corporation, I represent ITT's communications and information services companies. Along with publishing, education and other information services, this group provides worldwide record, data and voice services through such companies as ITT World Communications Inc. and U.S. Transmission Systems, Inc. Because the group's international activities generate a significant portion of its total revenues, we are vitally interested in the new rules S. 999 would establish for the provision of international services and facilities.

Last year, I supported the aims of S. 2469, as summarized by Senator Goldwater, that the FCC should "reduce regulation as competition develops in the provision of services, facilities, or access to or interconnection in foreign markets. But I went on to complain that ". . . S. 2469 fails to deal with the bottleneck monopolies of AT&T and Comsat over essential cable and satellite facilities." I also suggested that the bill overemphasized "reciprocal measures aimed at foreign administrations which do not share the current views of the United States regarding the promotion of competition."

Mr. Chairman, we found improvements in the version of S. 2469 which was passed by the Commerce Committee last year; and we are now pleased to acknowledge that S. 999 shows even more attention to the realities of the existing environment in international telecommunications. Accordingly, ITT's suggestions for improvement of S. 999 are offered with a view toward strengthening the statutory means to achieve your well-designed goals.

THE STRUCTURE OF U.S. INTERNATIONAL FACILITIES CONSTITUTE A BOTTLENECK

Relatively small changes are needed to assure that the AT&T and Comsat international facility advantages do not constitute bottlenecks which inhibit the development of full competition among U.S. carriers. They are:

(1) S. 999 should make it absolutely clear that all carriers can share in the economies of scale that ownership of high-capacity international cable and satellite systems confer; and

(2) Comsat must not be allowed to use its relationship with INTELSAT as a competitive advantage.

There is no question that the Section 606 provisions dealing with international go a long way toward setting up a structure under which small competitive carriers could compete with AT&T and Comsat. The requirement that interconnection charges, terms and conditions be based on cost is reasonable, and, if fairly administered, will benefit competition. To the extent that Act language requiring separate treatment of domestic and international carrier services actually means separate treatment of the domestic and the international segments of international services, such provisions should help to minimize predatory pricing actions by the monopoly carriers.

It would seem that interconnection charges based on true costs and charges to all competitors alike would be all that is needed. However, based on ITT's experience with cost determination in the domestic voice market—where only the bottleneck provider really knows its true costs—there remains a strong incentive for the carrier to allocate costs to its own advantage. It seems to us that only if each carrier can gain some control of its cost structure can real competition develop. It also seems to us that only small additions to S. 999 are needed to bring this about.

IN THE CASE OF AT&T

AT&T has the controlling U.S. interest in all international cable facilities landing on the U.S. Mainland, as well as virtually all of the international telephone services market. The costs of cable facilities reflect economies of scale such that the per-cir-

cuit investment required for a 4,000-circuit cable is much less than for a 160 circuit cable. Thus, only AT&T, with its monopoly of international telephone services, has enough traffic to justify building its own cables. In most circumstances, IRCs or potential new providers of international voice services could not justify the investments which would be required for competing (separate) cable systems.

This situation could change over time as the voice market opens to competition in some countries and other carriers make inroads on AT&T's dominant position. But this is not going to happen anytime soon. Therefore, S. 999 should provide that other carriers shall retain their rights to obtain ownership, indefeasible right of user, or cost-based lease interests in high-capacity cables (and other bottleneck) facilities, rather than being relegated to construction of their own cables at prohibitive costs. AT&T's obligations to permit such acquisitions may be inherent in the duties imposed by the antitrust laws upon a bottleneck monopolist, but S. 999 should be broadened to leave no doubt about preservation of this practice, which has resulted in the avoidance of unnecessary costs of service and facilitated the level of the competition that currently exists.

IN THE CASE OF COMSAT

By statute, INTELSAT satellites constitute a serious bottleneck because U.S. carriers must rely on Comsat for access from the United States to such facilities. Indeed, using its monopoly position as the U.S. representative to INTELSAT, Comsat is able to lease space segment capacity from INTELSAT at a rate which is about half the sum U.S. carriers must pay to obtain the same capacity from Comsat. (As Comsat has acknowledged in FCC proceedings, even the communications entity of the Soviet Union, which is not a member of INTELSAT, can obtain INTELSAT space segment at half the price that U.S. international carriers have to pay to Comsat.)

Now that the FCC has allowed Comsat to serve directly non-carrier customers, without abrogating its space segment monopoly, it has exacerbated the situation. And although S. 999 would permit the FCC to approve a competing satellite system, it may be many years before competing satellite systems would provide a viable alternative to the INTELSAT system. It is doubtful that foreign administrations would allow such competition.

At the end of his letter to the U.S. State Department concerning Orion's application, INTELSAT Director General Santiago Astrain points to a solution ITT has supported and still supports. "Within the framework of the INTELSAT Agreements each Party of Signatory may make internal arrangements for the distribution of INTELSAT capacity in any manner it chooses, involving any degree of competition in the provision of service to end users which is considered to be in its national interest. Consequently, if a Party or Signatory sees the need for private facilities for internation traffic or for additional competition in the provision of service, it can adjust its internal policies regarding the use of the INTELSAT system to meet those needs."

Comsat should not be permitted to retain an entrenched monopoly while also being permitted to expand into competitive markets. If Comsat wishes to retain its monopoly, it should forego such expansion. Conversely, if Congress or the FCC wishes to permit such Comsat expansion, the time has also come to terminate Comsat's role as the U.S. Signatory to INTELSAT and INMARSAT (with the attendant monopoly advantages of exclusive access to those bodies and preferential pricing arrangements for obtaining bottleneck facilities) and transfer the Signatory function to the State Department or the proposed Special Representative for Telecommunications and Information (with appropriate contributions and input from the proposed Task Force.) It would be particularly anomalous for S. 999 to retain Comsat's privileged "quasi-governmental" role as the U.S. Signatory in view of provisions proposing an interagency Task Force on communications foreign policy matters, appointment of a new Special Representative for Telecommunications and Information, an Assistant Secretary of State for Telecommunications Affairs, and termination of the presidential appointments to the Comsat Board.

Last year I testified that "if Comsat is to retain special monopoly privileges while also being allowed to expand into new competitive markets, the strictest possible preconditions must be imposed. At a minimum, such conditions should: enable other carriers to obtain space segment capacity on the same economic terms enjoyed by Comsat; abrogate the Comsat-dominated earth station ownership consortia, and the Comsat practice, amounting to a tying arrangement, of generally refusing to provide space segment capacity unless carriers also use Comsat-controlled earth stations; allow competing carriers to establish their own separate earth stations or otherwise

obtain earth station capacity on the basis of need; engender meaningful separations between the Comsat wholesale monopoly and competitive retail operations (even though both may be subject to FCC regulation); and assure that all competing carriers and transmission media have an equal opportunity to appeal to marketplace forces, unhampered by unnecessary regulatory restraints such as cable/satellite usage formulas or rate compositing requirements."

Since then, the FCC has allowed Comsat to expand into competitive markets and, in the process, has acted in some degree on each of these items except one—Comsat still retains its exclusive cost advantage because of its relation to INTELSAT. ITT believes S. 999 should finally end this dominance by allowing any carrier to deal with INTELSAT directly, or at least making it absolutely clear in S. 999 that "interconnection . . . based on cost" means that Comsat must offer it space segment facilities to other carriers at rates which are no higher than INTELSAT's charges therefor.

GOVERNMENT REORGANIZATION

ITT agrees that U.S. participation in international telecommunications markets should be more effective with better coordination of U.S. Government policy. The structure proposed in S. 999 seems reasonable, and we endorse the Task Force approach.

However, consideration should be given to making sure appropriate procedural safeguards are adopted in connection with Task Force recommendations to federal agencies, such as the FCC, under Section 205(a). To ensure administrative due process, any such recommendations should be in writing, with timely notice to interested parties; and the *ex parte* rules should apply. These safeguards are recognized today when NTIA and the Department of Justice submit comments to the FCC.

SUMMARY

In summary, I wish to congratulate the drafters of S. 999 for producing an international bill flexible enough to last for many years as the provision of international telecommunications services evolves from a monopoly environment to one in which competition is the norm. With the addition of ITT's suggestions that AT&T continue to allow other carrier participation in high-capacity cable systems and a modification of Comsat's role in satellite services facilities, S. 999 would be a good and substantial updating of the laws pertaining to international telecommunications.

[The following information was subsequently received for the record:]

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question. Yesterday, Comsat outlined a new approach to doing business by proposing that its World Systems Division would become a wholesale supplier, while an established fully separate retail affiliate would compete with most of you.

Do you have any preliminary reactions to these Comsat proposals?

What "bottom line" safeguards, in terms of separation of wholesale-retail activities, do you recommend?

Answer. As I understand Comsat's proposal, its world systems Division would retain its monopoly of genral-purpose, international satellite earth stations in the United States, as well as its monopoly of the U. S. interest in Intelsat space segment. Comsat would also establish a "fully-separated" retail affiliate to compete with other carriers. Thus, it is suggested that competition would be fair because all retail carriers would have "equal" access to the regulated monoply facilities operated by Comsat's World Systems Division.

Since that monoploy activity would have to be regulated, the objective of deregulation would not be advanced. (In this connection, it is noted that the single FCC investigation of Comsat's rates was concluded by a settlement which has been modified and/or interpreted through non-public proceedings.) Moreover, considering Comsat's ability to earn substantial profits from its monopoly activities, the proposed separation would be largely ineffective to prevent predatory practices by Comsat's retail entity. (World Systems Division could be expected to promote positions in Intelsat which benefit its retail affiliate.) In any event, it would be difficult or impossible to monitor internally-coordinated Management decisions by affiliated organizations under the ownership and control of Comsat.

In short, Comsat has presented another scheme which would permit it to retain its current monoply and to compete with its carrier customers, under the guise of

competition relating to services. In our view, such an arrangement is more likely to extend Comsat's monopoly to segments of the retail market than to promote genuine competition among entities with equal opportunities.

If it is detemined that Comsat should be wholesaler and retailer at the same time, other carriers should obtain access to the monoply facilities controlled and operated by Comsat at cost Clearly, there is precedent for such arrangements. We note that ITT Worldcom was able to acquire IRU interests in two foreign earth stations, paying no more than its proportionate share of the investment and operating cost. We would expect no less favorable treatment in our own country.

Question. Questions were raised by one of you indicating that differences in the domestic and international telecommunications markets do not warrant separate legislative treatment.

Do you agree?

Answer. No. The limitations on U.S. control over services between the United States and foreign countries are obvious. Issues relating to international trade, foreign relations and dealings with foreign monopoly administrations all require U.S. Government (interagency) coordinations and involvements which are not applicable to domestic telecommunications activities.

Question. MCI has complained that, under the FCC's interpretation of the Record Carrier Competition Act, new carriers are precluded from offering innovative pricing without extending it to subscribers of interconnected carriers. What is your reaction to this?

Answer. If carriers were allowed to price a segment of service differently, depending on the identity of the provider of an interconnected segment, the policy favoring interconnection could be easily defeated by monopoly or dominant carriers.

Senator GOLDWATER. Thank you very much.

Mr. Demory.

Mr. DEMORY. Mr. Chairman, I am pleased to have the opportunity to present our views on S. 999. I would like first to echo the statements of Chairman Fowler yesterday endorsing the thrust of the bill. Today I shall address the portions of S. 999 comprising proposed amendments to the Communications Act and to the Communications Satellite Act.

Generally, these provisions track the policy initiatives of the Commission over the last several years. Moreover, S. 999 recognizes that the provision of international telecommunications is a joint venture between sovereign States and balances our procompetitive policy with the realities of the international marketplace. Most importantly because of the critical national interest and economic implications, S. 999 recognizes that the formulation of an effective international telecommunications policy can only be achieved through continuous coordination between the Government and the private sector.

Underlying the regulatory program of S. 999 is a distinction the bill draws in section 601 between "telecommunications services" and "information services." From the definitions it appears the bill is drawing the same distinction the Commission drew in its Computer II decision between "basic services," or traditional common-carrier services, and "enhanced services." We endorse this aspect of the bill in that it appears to have the same goals as the Computer II policy.

While we believe the intent was to track the Commission's basic/enhanced dichotomy, the definition in S. 999 differs somewhat from the Commission's definition. To avoid confusion and to assure that the Commission's international Computer II rules track with its domestic Computer II rules, we might suggest some minor language changes in the bill's definition.

I would also note that S. 999 adopts a "definitional" approach to the deregulation of enhanced or "information services." That is, it defines information services as being other than telecommunications services and, as a result, beyond the jurisdiction of proposed title VI. This approach differs somewhat from the Commission's approach to deregulation in Computer II.

The Commission concluded that enhanced services are outside the scope of the term "common-carrier services" as used in title II and not subject to regulation. The Commission, however, concluded that enhanced services are not necessarily outside the term "communications" used in title I of the act. Rather, the Commission elected to forebear from regulation under current conditions. The Commission left open the possibility of asserting title I jurisdiction should it be necessary to protect the public interest.

S. 999 does not include any language regarding forebearance, it merely defines information services as outside regulated telecommunications. We recommend the language be amended to make clear that the Commission retains its flexibility to apply title I to international "enhanced services" should that ever prove necessary.

Section 603 directs the Commission to exercise minimal regulation and to revise, reduce or eliminate rules as competition develops. In extending the thrust of our domestic policy to the international arena, section 603 recognizes the benefits to users and carriers of streamlining regulations. Additionally, this section gives the Commission the flexibility to relax regulation as competition develops in a particular geographic area. Thus, given the right circumstances of open entry and fair competition, service to a particular country could be further streamlined.

Section 606, like the Record Carrier Competition Act of 1981, requires international telecommunication carriers to provide other carriers and customers cost-based interconnection upon reasonable request to their regulated services and facilities on a nondiscriminatory basis. We interpret section 606 to require any carrier providing domestic and international services to separately tariff these service segments and to interconnect the separate segments in a manner equal in type and quality to the interconnection provided to other carriers. Such interconnection would also be provided at the same rate and upon the same terms and conditions.

The public interest benefits arising from full and fair interconnection are well established. I would like to point out, however, some unavoidable shortrun hurdles which interconnection requirements raise.

Primarily, the interconnection of differently designed and configured networks makes interconnections exactly equal in type and quality difficult in all circumstances. As the number of carriers has increased, the number of distinct and often specialized networks has also increased. Further interconnection between incompatible networks may only be possible upon the expenditure of significant financial resources. Finally, the availability of specialized equipment and overall network capacity may also be factors.

In addition to the primary hurdle of design capability and capacity, questions may arise as to the points where interconnection should occur, the cost and maintenance of shared equipment, the

allocation of limited interconnection points among carriers seeking to interconnect, timetables for interconnection, and the question of whether a particular service falls within the statutory interconnection requirement.

Section 608 of the bill indicates that the Commission may assess international facility planning proposals and consult with foreign telecommunication entities. We welcome the inclusion of this section because it highlights the need for cooperation with our international partners—a reality of the international market. We interpret this section as not modifying a carrier's responsibility under section 214 or title III of the act relating to application filings and authorizations.

I would like now to turn to the proposed amendments to the Communications Satellite Act of 1962. As you know, the Satellite Act established Comsat as the U.S. signatory to Intelsat. The 1962 legislation created an unusual corporate structure to reflect Comsat's unique obligation.

The Commission, in the early years of Comsat's existence, was concerned about the building of the global satellite system mandated by the Satellite Act. Accordingly, it adopted policies to concentrate Comsat's attention on that task and to ensure that a strong, viable system evolved.

Now, nearly two decades later we have witnessed the fruits of these policies. Intelsat has become well established, and Comsat has become a successful enterprise with an admirable expertise in satellite technology.

The Commission thus concluded that the time has come to recognize these developments and has taken a number of decisions designed to place Comsat increasingly on the same footing as other regulated carriers. For example, in Authorized User Revisited, the Commission removed the restrictions on direct public operations by Comsat. The Commission's decision allows everyone—carrier, noncarrier and government alike—to deal with Comsat on the same terms and conditions.

First, this decision allows Comsat to offer basic transmission capacity, the space segment and associated Earth station services, that it now offers only to carriers to all users at the same tariff rate. The Government is thus free to deal directly with Comsat's World Systems Division without a middle man.

Second, for those customers who need more services than Comsat has traditionally provided, the Commission has allowed Comsat to provide "end-to-end" or through services. However, in the case of such services the Commission order required that Comsat operate only through a fully separate subsidiary. The separate subsidiary requirement does not constitute another middle man. Rather, it is necessary to prevent cross-subsidy between Comsat's Intelsat and Inmarsat monopoly services on the one hand and its competitive services on the other.

The separate corporate subsidiary should not increase anyone's end-to-end service costs unduly. End-to-end services consist of Comsat's basic transmission capacity plus whatever extra services are required to make that capacity of use to customers. So long as the end-to-end services are competitive, user costs should consist only

of Comsat's World Systems Division tariff plus the cost of those extra services.

Furthermore, we have cleared the way for Comsat to participate in activities outside of its role as the U.S. signatory to Intelsat. With the passage of time and as Comsat becomes more involved in unregulated, competitive, and nonstatutory activities, it is appropriate to allow Comsat's corporate organization and structure to evolve from the form established in the 1960's. Thus, Comsat should be permitted to function more in the fashion of a corporation subject to ordinary Commission oversight like other carrier entities.

We therefore support the proposals in S. 999 to amend the Communications Satellite Act.

As to the repeal of section 201(c)(8) which requires Comsat to obtain Commission authorization to issue stock or borrow money, we believe that Comsat's unique Intelsat and Inmarsat responsibilities justify some continued Commission oversight of its capital structure.

While we support the proposal to eliminate Commission review of each stock issuance, loan or assumption of obligation, we recommend requiring Comsat to periodically obtain Commission approval of its long-term capitalization plan.

We also welcome the amendment of section 102(d) of the act. While we view this amendment as clarifying Congress original intent that additional satellite systems could be authorized by the Commission if they are in the public interest, we would be pleased to have Congress give us a clear policy direction in this area.

That concludes my statement.

Thank you very much, Mr. Chairman.

Senator GOLDWATER. Thank you very much, Mr. Demory.

I want to remind all of you that we are open to any recommendations as to amendments. The bill is still in a formal stage. We realize that there are some improvements that can be made, and we do not want any of you to hesitate to let us know of any problems.

All right. Mr. Nichols.

Mr. NICHOLS. Thank you, Mr. Chairman.

First of all, may I say I have already submitted my testimony, and what I propose to do is highlight it briefly here.

Senator GOLDWATER. It will be printed in the record.

Mr. NICHOLS. Thank you.

I appreciate the opportunity to appear on behalf of AT&T this morning to testify on S. 999, the International Telecommunications Act of 1983.

I would first like to commend the subcommittee for retaining in this bill many positive aspects of last year's predecessor, S. 2469. In particular, I support the bill's strong emphasis in favor of marketplace competition and a lessening of regulation of services. This procompetition, proderegulation theme is fully consistent with the direction of the Commission's actions of late. And AT&T, like other carriers, has filed a number of requests for relief to reduce burdensome and unnecessary regulation for currently competitive services. Enactment of this legislation would no doubt give greater thrust to the deregulation movement.

I am also pleased to note that S. 999 properly recognizes the nature of international telecommunications services as a joint endeavor with representatives of sovereign nations. Last year's provisions concerning sectoral reciprocity and mandating without negotiation of resale and sharing of services, including the private line category, would have threatened, I believe, the vital cooperative relationship which the U.S. carriers must maintain with our foreign counterparts. Therefore, I am happy to see that S. 999 has been drafted with due regard for the paramount concept of international autonomy.

In the area of interconnection of regulated services and facilities, however, I must express some concern. While AT&T readily accepts the basic concept of interconnection, it must be recognized that our network has been designed and engineered for maximum efficiency of integrated operations. Hence, the same switching system handles both international and domestic functions.

We would have to make some significant modifications to accommodate interconnection arrangements as contemplated by this bill. These changes would surely not only be unnecessarily costly, but also unnecessarily time consuming.

In the Datel negotiations, AT&T and the international record carriers have been dealing with the interconnection of their international networks with the domestic segment of our network; and substantial progress has been made to work out the problems involved.

On the other hand, the bill we are considering today also calls for the interconnection of the domestic networks of other carriers to the international segment of ours. The complexity of these arrangements also dictate a flexible approach in determining interconnection arrangements that are technically appropriate and economically feasible.

Moreover, there are always, I fear, going to be disputes about the interpretation of the term "equal in type and quality" as we endeavor to satisfy the needs of the various other carriers.

For all these reasons, I submit the Commission, the FCC, must be given the flexibility to monitor interconnection developments and resolve any disputes that may arise.

In closing, let me say that I appreciate the concern for the U.S. policymaking responsibilities in the field of international telecommunications and information that are widely distributed throughout the government today.

The effort to consolidate certain responsibilities and to propose a special representative's office, along with a task force, holds promise for strengthening the development and forceful advocacy of U.S. policy, particularly at international conferences.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF RICHARD B. NICHOLS ON BEHALF OF AMERICAN TELEPHONE & TELEGRAPH CO.

Mr. Chairman, my name is Richard B. Nichols. I am Vice President—Overseas for the American Telephone and Telegraph Company's Long Lines Department. In this position, which I have held for the past 11 years, I have overall responsibility for planning and carrying out the important telecommunications services which my company provides between the United States and nations throughout the world. I

have also served the Bell System in marketing, engineering, operations and accounting positions over a 37-year period.

At the outset, I would like to observe that S. 999 retains many of the attractive features of its predecessor from last year, S. 2469. Also, in some vital areas S. 999 contains significant improvements over its predecessor. To be sure, S. 999 has, from my point of view, a few deficiencies which I will discuss later.

Let me begin by commenting on the positive aspects of the bill and then discuss some of the problem areas I see.

COMPETITION AND DEREGULATION

I again endorse the thrust of S. 999, which, like S. 2469, moves toward reliance on competition in the market, deregulation of services to the maximum extent feasible, and imposition of the most minimal regulation practical in those instances where effective competition has not yet developed. Additionally, as an important ingredient of encouraging competition, the bill acknowledges that there are no technological, operational or economic factors which would preclude the provision of international services under conditions of competition. This, indeed, is the principle behind the Commission's lifting of significant barriers to competition late last year by striking down its "TAT-4" policy which had prevented AT&T from providing international data services and had been generally understood to similarly prevent the International Record Carriers from providing voice services overseas. AT&T fully supports the policy that all carriers be free to utilize any available technology to meet the needs of their customers.

AT&T wholeheartedly endroses deregulation for all services which are subject to competition. We believe that where a particular international telecommunications service is fully competitive, regulation can disserve the public. Economic regulation may discourage market entry and innovation and inhibit competition in that it takes away the ability of carriers to make rapid, efficient responses to changes in demand, costs and other market conditions. Thus, such regulation should be imposed sparingly and only where absolutely necessary. As you are probably aware, AT&T and other carriers have already filed numerous requests for relief to reduce burdensome and unnecessary regulation of currently competitive services. Indeed, AT&T intends shortly to file a Petition for Rulemaking to reduce the regulatory burdens for the currently competitive international private line market. Timely consideration by the Commission of requests for lessened regulation is essential to ensure a steady and progressive transition to a fully competitive marketplace.

INTERNATIONAL COMITY

Last June, I commented favorably on the explicit recognition in S. 2469 that "the provision of international telecommunications services, and the planning, construction, and ownership of international telecommunications facilities, are necessarily joint undertakings betweem United States persons and representatives of numerous sovereign nations" and that "the interests of those sovereign nations are to be considered in the implementation of United States policy." This is a crucial point which belongs at the cornerstone of workable legislation for the international telecommunications industry. AT&T strongly endorses the retention in S. 999 of this vital concept of international comity.

As important as the provisions which are included in S. 999 are certain provisions which were in S. 2469 and have been deleted from this bill. Last year, a number of questions were raised with regard to the concept of "sectoral reciprocity," which was deleted from S. 2469 as reported out by the Committee. The deletion of such provisions is sound, as the appearance of unilateral or punitive actions is avoided. Legislation should not threaten the vital, cooperative relationship which we in the international telecommunications services business must have with the indispensable foreign administrations with whom we jointly provide international facilities and who coordinate the delivery of traffic into and out of their home countries. It is a wise decision to continue to keep such provisions out of S. 999.

In a similar vein, S. 999 wisely departs from the mandatory language of S. 2469 regarding resale and sharing of international services. The approach of S. 999 of a Congressional statement of policy favoring the deregulation of resale and sharing of international telecommunications services, and the promotion of that policy by way of meetings with foreign entities, is far to be preferred over the mandating of unlimited resale and sharing. AT&T has in fact filed and been authorized to remove tariff restrictions on the resale and sharing of international message telephone service. However, the prevailing international view opposing resale and sharing of private line services surely continues to dicatate a diplomatic approach to the issue. Accord-

ingly, I think that this bill's policy statement strikes the right chord for addressing this complex issue.

Overall, S. 999 establishes a good balance: a strong deregulatory approach with due regard for the complexities necessarily arising from the joint and equal roles which AT&T and the various other U.S. international service carriers must share with foreign entities in the planning and provision of international services and facilities.

INTERCONNECTION

While I endorse much of S. 999, I must express serious concern over some of the bill's interconnection provisions.

S. 999 mandates international carriers to furnish interconnection of regulated services or facilities with all carriers, facilities or customer premises equipment, and to furnish such interconnection under charges, terms or conditions that are just, reasonable and based on cost. As a general matter, these are valid principles.

However, the new language in Section 606(b) must be carefully considered. It requires treatment of any carrier offering both domestic and international telecommunications services as two conceptually separate entities and the furnishing of interconnection of domestic and international segments "equal in type and quality" and "at the same rate and upon the same terms and conditions" to other carriers as to the conceptually separate entity. I recognize that this provision is patterned after the Record Carrier Competition Act and may thus be assumed to be able to be readily implemented as to voice services. However, as a practical matter, significant technical modifications of electronic switching systems and other equipment would be required to accommodate the necessary interconnection arrangements. These changes would be costly and cannot be made overnight.

Section 606 envisages one type of interconnection that has been proposed before for international voice services—the interconnection of the domestic network of another carrier with the international segment of AT&T's public switched network. Heretofore, only the interconnection of another carrier's international network to the domestic segment of AT&T's network has been proposed.

The latter form of interconnection is the subject of the Datel interconnection negotiations conducted under the aegis of the Commission. These negotiations have led to short-term arrangements for improved interconnection which have now been implemented. Further long-term improvements expected to meet the needs of the International Record Carriers are planned to be implemented as rapidly as complex design changes to the domestic network will allow. The point, which has been clearly recognized in these Datel negotiaitons, is that the domestic portion of AT&T's network cannot readily accommodate functionally equal interconnection to the international networks of others, and considerable time and effort is required to effect the desired changes—hence the necessity for a reasonable transition period.

As to the interconnection of the domestic networks of other carriers to the international segment of AT&T's network, we can assume, based on the Datel interconnection experience, that numerous technical issues will probably need to be addressed. We are aware, for example, that software development efforts will be required for the proper recording of calls and billing of other carriers. Accommodation of this new type of interconnection may, for various reasons, require substantial changes which must be developed and implemented, in a technically and economically reasonable manner, by both interexchange and local exchange carriers.

At the least, therefore, the bill should recognize that the Commission needs reasonable flexibility in implementing the requirements of this section—not only as to timing, but also as to any problems that may legitimately preclude absolute equality. Indeed, I understand that the Commission has interpreted the Record Carrier Competition Act as not blindly requiring absolute parity. Rather, the Commission concluded that "generally equal" or "comparable"—but not "identical"—interconnection is satisfactory in appropriate circumstances to achieve Congress' intent in that legislation. I assume that the Committee intends the same flexibility here, and express clarification would be highly desirable.

Along these lines, I would like to mention one issue in particular which should be made explicit in the bill. As AT&T's network is configured, the same physical switching system performs both domestic and international switching functions. Such a technical design is very efficient, and should not be precluded. Indeed, to do otherwise, under a rigid definition of "equality", would unfairly restrict the integrated operations of AT&T—and possibly those of other carriers—and might go far beyond what is contemplated by this legislation.

Additionally, I would recommend incorporation into the bill of various statements contained in the Committee Report on S. 2469: that nothing in the act shall be construed to require a carrier to allow joint use by other carriers of switches used to provide telecommunications services, or to collocate in its buildings the equipment of other carriers; and further, that the act not be construed to prohibit a carrier from offering optional grades of interconnection and supporting auxilliary services at differing rates, provided such rates are based on costs of service. These are important principles which ought to be included in the bill itself, as should the statement that it is not the intent of Congress either to preclude sharing of facilities between the domestic and international operations of a single carrier or to cause revision of the national area code numbering plan. These statements would help to clarify the nature of the interconnection required by this bill.

Finally, I would like to comment briefly on questions of "costs" and "rates," starting with the provision in Section 606(a)(3) that the charges for interconnection be "based on cost." In my testimony last year I suggested that, because of the uncertainty as to the meaning of the definition of the term "cost," perhaps it would be well to use the "just and reasonable" standard which has served regulation so well in the past. I still believe that is the best course, but if you choose to retain the present language, I would request express recognition that the term "cost" should not be narrowly construed, as I fear it may be urged by some, to disallow the currently permitted elements of return on, and recovery of financing costs associated with, investment devoted to such interconnection.

A somewhat related problem arises regarding Section 606(b)(2) and (3), referring to the domestic segment of a carrier charging the "same rates" to its international segment as it charges other international carriers, and vice versa. It must be recognized here that no physical billing of "rates" takes place between the domestic and international segments of AT&T. Therefore, the demonstration of equality of rates must be based on uniformly developed costs which would underlie both AT&T's rates to the public and AT&T's rates to other carriers. It should be assured that these sections are interpreted to permit needed flexibility in implementing the "same rates" language.

GOVERNMENTAL STRUCTURE

I would like to make a brief observation concerning another significant new section of S. 999—the establishment of an Office of Special Representative for Telecommunications and Information in the Executive Office of the President. I think we can all agree that it is highly desirable and in the national interest that effective, coordinated policymaking in the international telecommunications and information field be achieved. If, in the considered opinion of Congress, creation of this position will enhance the development and forceful advocacy of U.S. policy in international fora, then I welcome this step.

Mr. Chairman, I commend the diligence of this subcommittee in pursuing effective legislation in the field of international telecommunications. With appropriate modifications and clarifications, I think that S. 999 will represent a positive initiative worthy of support.

[The following information was subsequently received for the record:]

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question. Yesterday, Comsat outlined a new approach to doing business by proposing that its World Systems Division would become a wholesale supplier, while an established fully separate retail affiliate would compete with most of you. Do you have any preliminary reactions to these Comsat proposals?

Answer. While AT&T is not fully informed as to all the details of Comsat's plans and has not fully analyzed those plans, AT&T can make a few general observations. Comsat's proposal embodies independent ownership of earth stations to work with the Intelsat System and phasing out of the Earth Station Ownership Committee arrangements. Also, Comsat's plan includes the unbundling of its charges to reflect separately the earth station portion and the space segment portion. AT&T has supported these concepts in proceedings before the Federal Communications Commission (FCC). In addition, Comsat proposes to establish a separate corporate subsidiary to provide "retail" services, which, we understand, comports with the FCC's Authorized User and related decisions. AT&T accepts the thrust of those orders and Comsat's proposal.

Question. RCA Globcom has suggested that, in the interest of centralization and technical expertise, the FCC should hold primary responsibility for overseas telecommunications policymaking and for representing the U.S. Government. Do you agree?

Answer. Telecommuncations policymaking in the United States involves a broad range of private sector interests, affects many segments of our economy and involves the expertise of several branches, departments and agencies of our government. In view of the many facets of such policymaking, the scope of the subject matters involved and the resources and expertise required to formulate and implement policy in this area, it does not seem appropriate to place such primary responsibility upon an independent regulatory agency, the principal focus of which is to regulate only a portion of the industry involved.

Question. MCI has complained that, under the FCC's interpretation of the Record Carrier Competition Act, new carriers are precluded from offering innovative pricing without extending it to subscribers of interconnected carriers. What is your reaction to this?

Answer. In view of the limited scope of the Record Carrier Competition Act and AT&T's lack of involvement in providing those record services, AT&T has no response to this question.

Question. Questions were raised by one of you indicating that differences in the domestic and international telecommunications markets do not warrant separate legislative treatment. Do you agree?

Answer. AT&T believes that there are distinct differences between domestic and international telecommunications which must be taken into account when considering legislation. For example, contrary to domestic telecommunications, international telecommunications involves the joint provision of services in cooperation with foreign carriers. Decisions cannot be made unilaterally, but require mutual understanding. Hence, recognition of "international comity" is important. Thus, AT&T has no objection to separate legislative treatment of international telecommunications and, indeed, any legislation must recognize the inherently unique characteristics of such services.

RE: S. 999 AMENDMENTS

The following are suggested amendments to S. 999, the International Telecommunications Act of 1983.

1. In various sections of the bill, such as Sections 602(a), 602(d) and 202(b), for example, words such as "encourage," and "promote" are used in the context of language establishing a policy of competition in the provision of international telecommunications services. Such verbiage should not be interpreted to establish a congressional policy of preferential treatment of new entrants into the marketplace or of handicapping of established carriers.

Recommendations: It should be made clear in the report accompanying the bill that when such words as "encourage", "promote" or words of similar import, are used to modify competition, they are not intended to imply preferential treatment for new entrants or discriminatory treatment or handicapping of established carriers.

2. Definitions, Sec. 601(3), p. 3, l. 21-25, p. 4, l. 1-3.

Issue: To make clear that a regulated service is one that is tariffed, which is obviously the intent of Section 605, the word "regulated" on p. 3 line 25, should be changed to "tariffed." Also this subsection defines "regulated service" as not only an international service designated by the Commission to be regulated, but also as "any . . . service or facilities not subject to effective competition as determined by the Commission pursuant to Section 604(b) . . ." Per Section 604(b)(1), there is a three-pronged test for determinating whether a service should be regulated. The test of being "subject to effective competition" is but one of those tests. Additionally, this part of the definition is unnecessarily redundant with Sec. 604(b).

Recommendation: Substitute on p. 3, line 25, the word "tariffed" for the word "regulated." Delete all language in Section 601(3) after the words "pursuant to this Act" at p. 3, l. 25.

3. Definitions, sec. 601(3), pp. 3-4, l. 21-3.

Issue: The definition is of "service" only, but throughout the bill reference is made to "service or facilities."

Recommendation: Addition of "or facilities" after "service" at l. 21, 22 and 23.

4. Definitions, sec. 601(6), p. 4, l. 14-23.

Issue: The definition is of "telecommunications", the term "switching" is used in the description of various components of "transmission." Since the term "transmis-

sion" is also used in the current Section 214 of the 1934 Act, this language could be misused to argue that Congress intends for "switching" to be subject to the certification requirements of Section 214. Switching equipment has traditionally and appropriately not been subject to § 214 regulation.

Recommendation: The report accompanying the bill should state expressly that inclusion of the term "switching" in Section 601(6) shall not be construed in any manner to extend the jurisdiction of the Commission under Section 214 of the 1934 Act to encompass switching equipment.

5. Definitions, sec. 601(7), pp. 4–5, l. 24–14.

Issue: A "carrier" is defined as "any person . . . which offers any international telecommunications service for hire." An entity providing non-regulated services "for hire" is like a customer from the perspective of a regulated carrier. With deregulation there will be no difference between an unregulated provider of services, a customer and a reseller. It should be made clear that the historical terminology of "carrier" is an entity offering "regulated" services for hire.

Recommendations: Insert "regulated" between "any" and "international" at p. 5, l. 1.

6. Statement of policy, sec. 602(d); p. 7, l. 11–13.

Issue: This section provides that interconnection is to be "based on cost." The meaning of "cost" can vary widely, and the Record Carrier Competition Act did not impose such a constraint concerning interconnection. Also, this issue can be addressed wholly by the specific interconnection Section 606.

Recommendation: Delete the remainder of the sentence after the word "to" on line 11 of p. 7, and substitute "require the interconnection of international telecommunications facilities in a just and reasonable manner." This would follow 1934 Act and RCCA closely.

7. Section 605(c)(2); p. 10, l. 7.

This provides that the Commission shall "revise" its list of regulated services at least once every two years, implying that there must be a change in the list, which may not be appropriate always. Use of the word "review" rather than "revise" would seem desirable.

Recommendation: Delete the word "revise" on p. 10, line 7 and substitute therefor the word "review."

8. New section 605(d).

"The Commission shall report to the Congress, on an annual basis, which international telecommunications services have been deregulated, and as to such international telecommunications services which remain regulated, the basis for such continued regulation."

Rationale: With minimal Commission burden, Congress can be more closely kept in touch with the progress of deregulation. Annual or periodic reports are required elsewhere in S. 999 (e.g., Task Force per Title II, Secs. 205(c) and 208(f), Secretary of Commerce per Title III, Sec. 303). Additionally, this reporting requirement would coincide with other Congressional oversight provisions of existing legislation.

9. New section 605(e).

"The Commission shall act, on the merits, on any petition by an international telecommunications carrier for deregulation or lessened regulation of a regulated service within 180 days of the submission of such petition. Any such petition shall, in the absence of such Commission action within said 180 days, be deemed granted by operation of law."

Rationale: Prompt response to deregulatory initiatives is essential to the development of a fully competitive marketplace. While the present Commission is diligent in furthering deregulation and would be expected to respond in a timely manner to such carrier initiatives, enactment of this provision would guard against any lessened vigilance by a future commission.

10. Section 606(a)(1), p. 10.

This section provides for the interconnection of a carrier's regulated "service or facilities." Inclusion of "facilities" in this section may raise serious questions of interconnecting in central offices, piecing out of facilities and integrating and commingling of competitors facilities. Use of the term "service" would appear to be adequate and such reference would be definitive as to obligations of the carrier since its regulated services would be tariffed.

Recommendation: Delete the words "or facilities" on p. 10, lines 16 and 17. Similarly, deletions of the phrase "or facilities" should occur on p. 11, lines 3–4 and lines 6–7.

11. Interconnection, sec. 606(a)(1)(C), p. 10, l. 22–24.

Issue: Upon reasonable request, interconnection of regulated services to "any customer premises equipment" of a customer of a given carrier is mandated. It should be clarified that customer premises equipment must meet FCC standards.

Recommendation: Insert "and which meets such standards as the Commission may establish under this Act" after present text. The suggested language is from the original text of S.2469.

12. Sec. 606(a)(1)(3), p. 11, l. 5-7.

Issue: Charges, terms or conditions for interconnection are to be "based on cost." This language was removed last year from S.2469 and a "just and reasonable" standard—such as in the 1934 Act and the RCCA—was substituted.

Recommendation: Delete the phrase "based on cost of" appearing on p. 11, line 6 and insert after the word "be" on said line 6 the phrase "contained in just and reasonable tariffs for".

13. New sec. 606(b)(4).

"The term 'equal in type and quality' contained in subsections (b)(2) and (b)(3) hereof is intended to mean essentially equal, comparable or functionally equivalent interconnection rather than absolute, identical equality. The Commission shall have authority to determine whether interconnection arrangements under said subsections are essentially equal, comparable or functionally equivalent."

Rationale: The Commission requires flexibility to deal with complex technical and economic issues regarding interconnection. There may, for instance, be some interconnection arrangements which would be uneconomic if "absolute equality" had to be achieved; other arrangements, while not absolutely the same technically, can render the same or equivalent quality to the subscriber. This amendment is further supported by proposed new Section 606(c)(3), allowing the offering of optional grades of interconnection at differing rates.

14. New sec. 606(c), while redesignating present (c) as (d).

"(c) Nothing in this Act shall be construed to:

(1) Prohibit a carrier from utilizing any switching system for the integrated provision of that carrier's own domestic and international telecommunications services;

(2) Require a carrier to allow joint use of international telecommunications, or to require a carrier to allow collocation in its buildings of the equipment of other carriers;

(3) Prohibit the offering of optional grades of interconnection and supporting ancillary services at differing rates;

(4) require revision of the national numbering area (area codes); or

(5) Prevent the Commission from permitting reasonable divergence or delay in meeting the requirements of this section, provided that such divergence or delay is the minimum reasonably necessary."

Rationale: a similar amendment (parts 2-5) was proposed for S. 2469, and though not adopted as statutory language, parts (2), (3) and (4) were favorably addressed in the Committee Report at p. 12. The proposed amendment would clarify the nature of interconnection required by the bill and affirm the continuity of established integration of the domestic and international services of a carrier.

15. Redesignated section 606(d) [old section 505(c)], p. 12, lines 10 and 11. This section provides a severe penalty of $250,000 for failure of a carrier to comply with the interconnection requirements of Section 606. However, by broadly referring to a violation of any "provision of this section", substantial liability may attach if subsequent litigation establishes that certain interconnection requests should have been complied with by the carriers. This places the carrier in a position of acting at its peril in refusing requests that it believes to be unreasonable. This is particularly unfair when one contemplates the complex technical and economic issues that may arise regarding such interconnection, especially in view of the potential liabilities that could attach to such refusals. Only by limiting the operation of this section to violation of a Commission rule or order can the requirements of interconnection be ascertained definitively and the carriers be apprised of their obligations.

Recommendation: Delete the phrase "provision of this section or any" on p. 12. lines 10-11; delete the word "thereunder" on said line 11; and insert after the word "promulgated" on said line 11 the phrase "by the Commission under this section."

16. Carrier contracts, sec. 607(b), p. 13, l. 1-9

Issue: Sec. 607(a) affects only inter-carrier contracts entered into after enactment. Sec. 607(b) does not have such a limitation. There is no reason why subsection (a) and (b) should not be alike in this regard. Also, it could be argued that an attempt to establish new ground rules for existing contracts could be violative of the constitutional prohibition against impairment of contracts.

Recommendation: Insert "entered into after the date of enactment of this title" following "any contract, agreement or arrangement." This would make the effective date of this subsection the same as that of Section 607(a).

17. International telecommunication facilities, sec. 608(a)(1), p. 13, l. 11-13

Issue: The Commission has expressed its intention to remove itself from close scrutiny of the utilization of facilities, consistent with a deregulatory and procompetitive recognition that decisions on the use of facilities are properly driven by marketplace forces. The bill otherwise recognizes the validity of such a policy.

Recommendation: Deletion of "and utilization" at l. 11.

18. International telecommunication facilities, sec. 608(a)(2), p. 13, l. 14-18

Issue: The Commission is authorized to consult with U.S. "carriers, including persons seeking to participate in ownership and operation" of international facilities in its assessment of carrier facility construction proposals. In undersea cable facilities, no entities other than regulated common carriers own and operate the systems. The term "persons" could be construed to mean other than "carriers", such as customers, or unregulated entities, who should not be inferentially authorized to own interests in such cable facilities.

Recommendation: Deletion of "persons" and subsitution therefor of "carriers."

19. Sec. 608(b), p. 13, l. 19-21.

Issue: The Commission is authorized to meet with foreign representatives to exchange information on international facilities. S. 2469 delineated that such contacts were to occur solely with foreign representatives responsible for facility planning matters.

Recommendation: Insert "responsible for facilities planning in their home countries" between "foreign telecommunications entities" and "to exchange information."

20. Establishment of the task force, title II, sec. 204(a), p. 21, l. 2-7.

Issue: The Task Force is mostly composed of Executive Branch positions and is chaired by the Special Representative for Telecommunications and Information. Section 203(b)(3)(B) establishes that the Special Representative "shall coordinate executive branch development of (U.S. telecommunications and information) policies." Accordingly, it appears that for S. 999, in contrast to the S. 2469 approach where the Task Force was unquestionably "the principal coordinating body," the Task Force has a secondary responsibility in the proposed government structure. However, the second sentence of Section 204(a) assigns the task force a primary role in conflict with Section 203(b)(3)(B).

Recommendation: Deletion of second sentence, lines 5-7.

21. Title II, sec. 204(c), p. 22, l. 6-7.

Issue: No Vice Chairman is designated.

Recommendation: A choice might be appropriate from among: the Deputy Special Representative, the Secretary of Commerce (the Chairman under S. 2469), or the Secretary of State (the Vice Chairman under S. 2469).

22. Transfer of functions, title II of S. 999, sec. 206(c), p. 25, l. 6-10.

Issue: Other subsections of Section 206 transfer functions to the Special Representative, and it is not clear why functions vested in the Director of the International Communications Agency are transferred instead to the Task Force.

Recommendation: Clarification or change from "Task Force" to "Office of the Special Representative for Telecommunications and Information" might be appropriate.

Senator GOLDWATER. Thank you very much for your testimony, Mr. Nichols.

Now we have Mr. Eugene Murphy, chairman of RCA Global.

Mr. MURPHY. Thank you very much, Mr. Chairman.

I have submitted a separate statement and request it be put in the record.

Senator GOLDWATER. It will.

Mr. MURPHY. I will summarize the key points.

Let me first stress that international record communications have always been competitive and are becoming even more so. What is not fully competitive today are the international voice services, by far the largest segment of the market. Recent changes in our industry have been dramatic and far-reaching.

As a result of the Record Carrier Communication Act of 1981, Western Union is now providing overseas Telex and other services

to a growing number of countries. The FCC has allowed AT&T to enter this market with its voice telephone monopoly essentially intact, and Comsat has been authorized by the FCC to provide leased satellite services for end users while retaining its Intelsat monopoly.

To assure an environment where full competition will be possible in international communications, it is important that AT&T and Comsat not be allowed to use their monopoly bases to preclude others from competing. Without necessary procompetitive safeguards, expansion into the international record communications service market by AT&T and Comsat will not promote competition.

AT&T has a virtual monopoly of the international voice market that accounts for two-thirds of the total international communications market. This overwhelming market advantage is unaffected by divestiture. AT&T expansion should be accompanied by safeguards. We are pleased that the bill requires AT&T to furnish interconnection services that are both equal in type and quality and provided at the same rates, terms, and conditions as those given any other entity including AT&T and its affiliates.

Certainly AT&T should not be permitted to offer overseas record communications under conditions that are different from those imposed last year by the Congress on the international record carriers under the 1981 act. In addition, the bill should be amended to permit the FCC to impose such requirements on any deregulated services AT&T may offer.

In this connection, Mr. Chairman, I would like to strongly support Mr. Demory's position that title I of the Communications Act should continue to be applicable to international enhanced services. This will enable the Commission to exercise jurisdiction if necessary to protect the public interest.

Congress gave Comsat its present U.S. monopoly over access to the international satellite system on the understanding that fair terms of competition require that Comsat not offer services directly to the public. Now, the FCC has changed the rules of the game. Moreover, it has done so in a manner which is basically unfair by allowing Comsat to maintain its monopoly over access to Intelsat. As a result, Comsat will be able to charge RCA Globecom, and the other common carriers the same price for satellite capacity as it does to end users.

This effectively forecloses the other carriers from competing with Comsat. If Comsat is now to be both a wholesaler and a retailer, other carriers must be able to compete with Comsat on a relatively equal footing. This means that competing carriers should be able to obtain cost based access to Intelsat facilities and be allowed to build their own Earth station so that they can access the international space segment directly.

The legislation should also require Comsat to offer retail services through a separate subsidiary so long as it retains its Intelsat monopoly. Otherwise, Comsat will continue to use this monopoly to its own advantage. For example, in the past, in a U.S. Government procurement, Comsat quoted RCA Globecom, and other carriers a higher price for satellite service than it included in its own bid to the customer.

I should like to add one point not expressly covered in my statement. The Intelsat system should not be used to provide domestic satellite communications services except in unique and unusual circumstances. Privately owned U.S. carriers are committing substantial funds to meet the need for satellite services within the United States, and the FCC has just authorized construction and launching of a new generation of domestic satellites that will make maximum use of the radio spectrum.

Intelsat with its substantial foreign ownership and investment, is an unneeded, inappropriate carrier in our highly competitive domestic satellite market.

Turning briefly to other aspects of the bill, we see no need to create a new layer of Government administration to oversee the facility planning process. The primary purpose of U.S. Government involvement in the planning process is to set guidelines, and we believe this responsibility should remain with the Federal Communications Commission.

International communications is a joint undertaking with our foreign correspondents and requires their cooperation and support. We endorse those provisions of the bill which recognize their interests and those of the sovereign entities they represent.

Thank you very much, Mr. Chairman.

[The statement follows:]

STATEMENT OF EUGENE F. MURPHY, CHAIRMAN, RCA GLOBAL COMMUNICATIONS, INC.

Chairman Goldwater and members of the Subcommittee, my name is Eugene F. Murphy. I am a Group Vice President of RCA Corporation and Chairman of the Board of RCA Global Communications, Inc. (RCA Globcom). I appreciate the opportunity to participate in today's hearing on S. 999.

INTRODUCTION AND SUMMARY

RCA Globcom has been a common carrier of international communications services for more than 60 years. We have pioneered many of the services that our industry now offers, including overseas leased channels and telex. With over 1900 employees, we provide a full range of record communications services[1] between the U.S. and over 200 points around the world, as well as overseas voice service. We also have recently begun to offer domestic telex service.

RCA Globcom supports the pro-competitive thrust of this bill. We believe, however, that, if competition is truly to be encouraged, any legislation must deal with the monopoly advantages enjoyed by AT&T and Comsat. The expansion of these carriers into the international record communications market must be accompanied by adequate transitional safeguards to preserve existing competition.

Our concerns are based in part on the fundamental characteristics of the international communications market, and particularly the international record communications market.

The international record carrier market is relatively small. The market in which we operate was about $579 million in 1981—less than 1 percent of the $66 billion domestic market.

Telex, which has been the mainstay of the international record communications business in recent years, has experienced declining growth rates in recent years.

Today we compete directly and actively with more than a dozen companies for all types of traffic—primarily telex, telegram and leased channel services.

The structure of the international non-voice communications industry is changing as a result of FCC policy.

AT&T has recently been granted authority by the FCC to provide international record service.

---

[1] Record communications services include telegram, telex, leased telegraph channels, alternate and simultaneous voice/data channels, data and facsimile transmission.

Less than a year ago, Western Union entered the international record communications market as a result of the enactment of the Record Carrier Competition Act of 1981 (RCCA). MCI and SBS have entered the market as well.

Comsat has obtained permission from the FCC to serve end users directly.

What is not competitive today in any meaningful way is international voice communications and the provision of international satellite facilities. In order to allow for competition in all segments of the international communications market, any new legislation must effectively address the AT&T and Comsat monopolies. Care must be taken in considering legislation to assure that conditions are created to foster rather than defeat full and fair competition.

Emerging technology, marketplace trends, and the realities of competition are blurring the former distinctions between domestic and international communications. Foreign entities in competition with U.S. industry do not operate under a bifurcated statutory scheme. Customers of the U.S. carriers want the convenience of obtaining international and domestic services from a single carrier. Because of regulatory actions recently taken by the FCC, the international communications market is now in considerable flux.

In these circumstances, the Congress should avoid creating different legislative requirements for international communications than apply under the Communications Act of 1934 for domestic communications. While there are differences in the domestic and international markets, these differences do not warrant adoption of inconsistent statutory provisions governing such areas as interconnection and tariffing.

I. LEGISLATION MUST PROVIDE SAFEGUARDS IF MONOPOLY CARRIERS, AT&T AND COMSAT, ARE TO BE ALLOWED TO EXPAND IN THE COMPETITIVE MARKETPLACE

The international communications industry is basically healthy, and its existing competitive structure has benefited the public. The United States now has an innovative, technologically advanced international telecommunications industry providing service as good as or better than that available anywhere in the world. New technology and competitive incentives have combined to produce cost savings that have been passed through to consumers of international communications services.

The carriers providing these services to the public operate in a competitive marketplace and have always done so. Over the years, the industry has introduced new services and maintained high service standards for existing offerings. Moreover, RCA Globcom's company-wide return on investment was only 10.1 percent in 1982. This is substantially less than the 12.75 percent rate of return prescribed for AT&T's monopoly services and the 12.48 percent that is allowed Comsat.

We believe that uncontrolled expansion into the international market by monopoly-based carriers, such as AT&T and Comsat, would not promote the pro-competitive goals of S. 999. Safeguards are necessary to assure that those monopoly carriers do not inhibit competitive opportunities, keep our smaller entrants and thereby reduce service options available to the public.

A. Safeguards must accompany any AT&T expansion in the international record market

AT&T dominates the domestic and international voice communications markets. While Judge Greene has approved the modified settlement agreement between AT&T and the Justice Department, divestiture left intact the monopoly held by AT&T Long Lines over the international voice market and its control of essential communications facilities.

AT&T's historic position gives it unique advantages.

AT&T enjoys well over 90 percent of the revenues of all overseas telephone service originating or terminating in the continental United States; its $1.5 billion revenues from overseas telephone service alone are more than double those of all services offered by the entire competitive international record carrier industry combined.

AT&T owns about 85–90 percent of the U.S. share in all transoceanic telecommunications cable systems landing in the United States.

AT&T uses nearly 90 percent of the international satellite circuits leased by Comsat.

AT&T also owns 100 percent of the domestic connecting facilitites which extend cable systems into the major population centers and all of the circuits that link the U.S. international earth stations to major population centers.

An independent study prepared for the National Telecommunications and Information Administration of the Department of Commerce (NTIA) in 1981 reached the

conclusion that AT&T general entry into international record communications would likely pose a major threat to future competition. As stated in NTIA's Study:

"[T]he long-term effect of unlimited [AT&T] entry . . . could be disastrous to competition in international telecommunications services." [2]

The NTIA Study noted "the odds are" that the international communications industry "could feasibly become controlled by either a single entity—AT&T or by a duopoly of AT&T and COMSAT." [3]

The FCC, however, has allowed AT&T to provide record communications services to overseas points without restriction.[4] That decision, adopted in December 1982, is now in the process of reconsideration. We have asked the FCC to determine whether, at the very least, AT&T should be subject to the same interconnection requirements that are imposed on international record carriers many times smaller than AT&T by the RCCA.

Absent such interconnection provisions, the FCC decision gives AT&T an unfair advantage because of the company's monopoly of international telephone service and the preferential terms of interconnection between AT&T Long Lines' domestic facilities and its international network. By contrast, our ability to gain the same access to customers in the United States is restricted by the lack of dialing and operational parity with AT&T's services.[5]

Accordingly, AT&T's expansion into the international record communications market should be accompanied by a requirement that AT&T make its domestic facilities available to other carriers on the same basis that it makes these facilities available to its overseas operations. AT&T Long Lines should not receive preferential rates and terms of interconnection to domestic transmission facilities for international voice and data traffic. Instead, it should be subject to RCCA-type interconnection requirements that already apply to international record carriers. This safeguard is especially important in view of the difficulty which the FCC has had in the past in regulating AT&T.

Section 606 of the bill achieves this important objective by directing that all U.S. carriers providing regulated (*i.e.*, non-competitive) services must interconnect with others in a manner that does not favor their own services. This would require all carriers providing international telecommunications services to make their domestic facilities available to other carriers on the same basis, including the same rates, that it makes these available to its own international operations. This assures that such carriers will not provide more favorable treatment to their own traffic, to the detriment of other carriers.

While we support section 606, we also recommend that this provision be strengthened by giving the FCC discretionary authority to continue equal access requirements for deregulated services offered by a carrier with bottleneck control of essential facilities. This would keep AT&T from taking advantage of the deregulation of any services to charge other carriers more for using the same facilities to carry their enhanced services than it charges itself.

B. Comsat's unconditional expansion in the retail market would be anticompetitive

In recognition of the monopoly given to Comsat by the 1962 Satellite Act, it was originally intended by Congress that Comsat and the service carriers would not compete in the same market. Comsat would provide facilities to the carriers, and the carriers would serve the public. This concept of Comsat as a "carrier's carrier" was formalized in the FCC's 1966 Authorized User decision.[6]

Since then Comsat has prospered, and the Intelsat system has become an effective global communications network. Nevertheless, the FCC recently revoked its Authorized User decision and allowed Comsat to serve end-users directly. But the FCC failed to take simultaneous action on the long-standing requests by other carriers for access to Intelsat facilities equivalent to that enjoyed by Comsat, which would permit these carriers to compete with Comsat on relatively equivalent terms.

RCA Globcom and other carriers have protested the FCC decision vigorously. We believe competition would be harmed if Comsat were allowed to provide satellite

---

[2] "Competition and De-Regulation in International Telecommunications," Vol. I, p. 5-12.

[3] NTIA Study, pp. 16, 6-7.

[4] Overseas Communications Services (CC Docket No. 80-632), Order FCC 82-547 (released December 22, 1982).

[5] Some improvements in interconnection with AT&T have been obtained, after years of litigation. But it will be some time, perhaps four years or longer, before we may except to have anything approximating "parity" of interconnection with AT&T facilities. Still to be resolved are the costs of interconnection and how costs should be allocated among AT&T and the other carriers.

[6] Authorized Entities and Users, 4 FCC 2d 421 (1966).

service directly to the public while the other carriers continue to be denied equivalent access to Intelsat. The FCC's decision has been stayed pending an appeal to the courts.[7]

Allowing Comsat in its present form to expand from a monopoly base does not serve pro-competitive objectives. Comsat is the monopoly provider of Intelsat satellite facilities for international and maritime services. It enjoys special privileges as a quasi-governmental entity created under an Act of Congress. Comsat should not retain its monopoly over access to Intelsat facilities and at the same time be allowed to deal directly with end-users in competition with carriers who must take Intelsat facilities from Comsat at prices that include a substantial mark-up.

But, if Comsat is to act both as a wholesaler and a retailer, legislation must allow the other international carriers to compete with Comsat on a relatively equal footing. This requires (1) giving the other international carriers authority to acquire Intelsat services on terms equivalent to those enjoyed by Comsat; and (2) requiring Comsat to establish a separate subsidiary for all of its retail activities as long as it retains its Intelsat monopoly. In addition, Comsat should be reorganized so as to eliminate the Presidentially-appointed directors from its board and other vestiges of its former preferred status.

Allowing international carriers access to international satellite facilities on terms equivalent with Comsat will serve the pro-competitive objectives of S. 999. Equivalent access means essentially two things: (a) cost-based access to Intelsat; (b) authority for other U.S. carriers to construct and operate their own earth stations by which they can obtain direct access to Intelsat satellites, rather than being required, as now, to use earth stations operated by Comsat.

By cost-based access to Intelsat, we mean the ability to acquire Intelsat space segment capacity from Comsat at approximately the same Intelsat utilization charge per circuit (now $390 a month) at which Comsat acquires these facilities, plus a ministerial fee to defray any expenses Comsat may incur in arranging for access. Under the current situation, Comsat acquires Intelsat space segment for $390 per half-circuit, adds its earth station and other expenses, and marks the charges up to $1,125 per month. This allows Comsat to earn a 12.48 percent rate of return. If Comsat is to be allowed to market these services at the same cost to carriers and to end-users alike, as the FCC has decided, other carriers wishing to cover their own expenses and earn a fair rate of return themselves can do so only by pricing themselves out of the market.

In order to fully and fairly compete with Comsat, other carriers need to acquire Intelsat space segment capacity at roughly the same costs at which Comsat acquires it. Absent provision for cost-based access to Intelsat, there can be no effective competition with Comsat for international satellite communications services.

Section 304(g) of the bill gives the FCC only discretionary authority to require Comsat to offer retail service through a separate subsidiary. This discretionary separation requirement does not fully recognize the unique status of Comsat arising from its monopoly provision of Intelsat services and its relationship to Intelsat. In this regard, the legislation must not make separation contingent upon the discretion of the FCC. It should explicitly require separation between Comsat's retail service and its provision of Intelsat services as long as it retains its monopoly.

In August 1982, the FCC authorized Comsat to provide retail services without a separate subsidiary and began proceedings to determine the basis on which equivalent Intelsat access will be available to other carriers.[8] It received public comment on the issues in December 1982. Our comments included specific proposals recommending how the FCC can implement cost-based access to the Intelsat space segment and independent ownership of earth stations quickly and without harming Comsat or Intelsat. The FCC is now considering these and other comments. Any legislation enacted now should specifically direct that equivalent Intelsat access be given to other carriers no later than the time Comsat enters the end-user market; and, if equivalent access is not immediately granted, Comsat should be required to provided all retail service from a separate subsidiary.

---

[7] Authorized User Policy, 90 FCC 2d 1394 (1982), stayed pending appeal sub nomine *ITT World Communications Inc.* v. *FCC*, No. 79-1046 (D.C. Cir., entered March 1, 1983).

[8] Regulatory Policies Concerning Direct Access, 90 FCC 2d 1446 (1982), and Modification of Policy and Ownership and Operation of U.S. Earth Stations, 90 FCC 2d 1458 (1982).

II. ANY LEGISLATION CONCERNING INTERNATIONAL RESALE AND SHARING SHOULD TAKE FOREIGN CONCERNS INTO ACCOUNT

As the bill recognizes, significant differences exist between international and domestic services. The role of our foreign correspondents, whose cooperation and support are necessary to effective international telecommunications service, is crucial. We endorse those sections of the bill which recognize the interests of our correspodents and the sovereign entities they represent. We believe, as indicated in the bill, that the issue of resale or shared use of international telecommunications services should be discussed with such entities and not be the subject of unilateral action. We believe that such discussions will be helpful towards resolution of any issues which exist.

III. INTERNATIONAL FACILITIES PLANNING

Title II of the bill could create an additional layer of administration in government. It also shifts international telecommunications policy and planning away from the FCC and affected carriers. We believe the interests of the U.S. would be best served if the FCC continues to hold primary responsibility for overseas telecommunications policy and for representing the U.S. Government. The FCC is currently charged with responsibility for regulating international communications carriers. Centralization of this function in one agency, in view of existing law and the technical nature of the subject, will expedite decisionmaking and policy formulation. It will also minimize the possibility of conflicting interpretations and divergent rulings on major issues.

However, it should be recognized that the Government's role should be limited to policy formulation. Specific facility planning and operating matters, under basic governmental policies, have been traditionally and more efficiently handled by private enterprise in concert with the foreign telecommunications entities that are our operating partners. These functions should remain the responsibility of the carriers. The FCC should undertake appropriate prior consultation with the Executive Branch of the government and continue to permit full participation by the public and the industry in the decision making process.

We recommend section 608 of the bill clarify that the FCC's role in facilities planning is limited to setting guidelines for the planning of future cable and satellite facilities and assessing carrier proposals. Neither the FCC nor other government agencies should become involved as direct participants in the direct negotiation of facility arrangements or the subsequent management of these privately owned and financed facilities. The point overlooked here is the fact that U.S. private enterprise—not the Government—owns and finances (without subsidy) the cable and satellite facilities. Government should not intrude on the traditional management role of the private sector.

IV. SEVERAL OTHER PROVISIONS OF THE BILL REQUIRE CLARIFICATION OR MODIFICATION

We have reviewed the other provisions of the bill and we believe several provisions need clarification or modification.

A. Deregulation

The approach toward deregulation taken in sections 601 and 604 of the bill proposes a regulatory classification scheme based on services and exempts "information services" (enhanced services) from regulation. This would even be the case if these services were offered by dominant carriers. This approach could create opportunities for monopoly-based carriers to cross-subsidize deregulated services and to make them available under unfair, discriminatory, and anticompetitive interconnection arrangements. Accordingly, the bill should be modified to permit the FCC, in its discretion, to impose appropriate restrictions on carriers providing monopoly services to prevent them from obtaining unfair advantages in the provision of otherwise unregulated services.

B. Cost-based Access

Section 602(d) sets out a general policy favoring interconnection based on cost. Section 606(a)(3) is slightly more specific, requiring carriers to interconnect their regulated services and facilities based on the cost of the services or facilities provided for interconnection. These provisions apply to all carriers.

It should be made clear that these provisions require Comsat, in addition to providing cost-based access to Intelsat, to unbundle its charges for space segment and earth station access and to make these facilities separately available. It should also be clarified that Comsat's charge for making Intelsat space segment available

should be based on the Intelsat utilization charge (now $390 per monthly half circuit) and any incidental expenses incurred in arranging for access.

CONCLUSION

RCA Globcom believes that an environment conducive to full and fair competition will foster a financially healthy international record telecommunications industry and benefit the public.

AT&T and Comsat must not be allowed to exercise their monopoly power in the international record communications market to the detriment of existing competition. It would be unwise and dangerous to permit entities providing protected monopoly service to encroach indiscriminately upon a limited market that is already competitive.

Thank you for allowing me to share with the members of the Subcommittee our views on the complex issues before you. We welcome your continuing interest in how best to promote a strong, competitive industry and are prepared to work with you and the Subcommittee staff to achieve that objective.

[The following information was subsequently received for the record:]

RCA COMMUNICATIONS, INC.,
New York, N.Y., May 20, 1983.

Hon. BARRY M. GOLDWATER,
Chairman, Subcommittee on Communications, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN GOLDWATER: I would like to supplement my testimony given before the Subcommittee on the above-referenced bill by expressing my concern about one aspect of Section 304(a). This would amend Section 102(d) of the Communications Satellite Act of 1962 so as "not to preclude" the use of Intelsat for domestic communications services where it would be consistent with other provisions of S. 999.

RCA Communications does not believe that Intelsat should be authorized to provide domestic satellite services except in the most unusual and unique circumstances. Such circumstances do not exist today and are most unlikely to exist in the foreseeable future. Domestic, privately-owned carriers have committed substantial investments to meet the need for satellite services within the United States. In addition, the FCC has strived to keep supply in balance with demand and has just authorized the construction and launching of a new generation of domestic satellites that will make maximum use of the radio spectrum and orbital positions.

Over 75 percent of Intelsat's ownership and investment is in the hands of foreign interests, unlike U.S. domestic satellite carriers, all of which are privately-owned. In addition, unlike the entrepreneurial nature of U.S. satellite carriers, Intelsat depends entirely upon monopoly revenues. In sum, RCA Communications believes that Intelsat is an unneeded and inappropriate competitor in our highly-competitive domestic market.

For these reasons, we believe that Section 304(a) should be revised to remove the implication that the FCC can authorize Intelsat to provide domestic services.

Sincerely yours,

EUGENE F. MURPHY,
President and Chief Executive Officer.

Senator GOLDWATER. Thank you very much for your testimony. I have just a few questions. In Mr. Demory's testimony, he said, and I quote, "Thus, Comsat should be permitted to function more in the fashion of a corporation subject to ordinary Commission oversight like other carrier entities.

I read that because yesterday Comsat outlined a new approach to doing business, by proposing that its World Systems Division would become a wholesale supplier while an established, fully separate retail affiliate would compete with most of you. Do you have any preliminary reactions to these Comsat proposals, and what bottom line safeguards in terms of separation of wholesale-retail activities would you recommend? Anybody can answer. Yes?

Mr. MURPHY. Well, Senator, as I understand the distinction that was made or attempted to be made was one between facilities and

services. The fact of the matter is that the carriers are involved in providing a total service to the customer, and indeed the so-called facilities provided by the Communications Satellite Corp. on a wholesale are just part of the service.

It is not really a valid distinction. We have to be in a position, Senator, where we can provide on a cost basis competitive services to the customers. It is patently unfair for Communications Satellite Corp. to be in a position of having a wholesale position, providing service or facilities, if they wish to call it that, to carriers such as RCA, and then in turn competing with us directly in the same marketplace to provide retail service.

I cite one example, Senator, involving a 1.54 megabit facility procurement for the Defense Department between Hawaii and Guam in which the Communications Satellite Corp. bid to the various authorized carriers and also bid to the customer, the Department of Defense. Indeed, it was the same rate. There is no way that the carrier could then effectively compete for the service. Eventually, this bid was overturned by the FCC, but it is just an example of the difficulty we would have trying to operate in such an artificial environment, and certainly this does not promote the basic purpose of the bill, which is to encourage and advance the competitive situation in the international marketplace.

Thank you, sir.

Senator GOLDWATER. I wanted to ask that question. I am glad that Mr. Demory brought it up. I understand that when you buy services from Intelsat, that Comsat about doubles the cost.

Mr. MURPHY. Yes, on that order of magnitude. What happens is, there is an Intelsat charge. Comsat adds to that an Earth station and other administrative charges and comes up with a total charge to the carrier which is $1,125 per half circuit. The basic Intelsat charge is $390.

Senator GOLDWATER. That gives them quite a wallop when they are going to do wholesale and retail, does it not?

Mr. MURPHY. Yes, sir. That is why our position, as expressed in my full statement before the subcommittee, is that competing carriers should be allowed to have direct cost-based access to the international space segment. If there are administrative or ministerial type costs which are being incurred by Comsat, then certainly we are prepared to pay our fair share of those costs.

In addition to that, I think it is of critical importance that the carriers be allowed to construct and build their own Earth stations in order to access the international space segment directly.

Senator GOLDWATER. Thank you. Mr. Wright?

Mr. WRIGHT. Yes, Mr. Chairman. I would like to endorse Mr. Murphy's position as it relates to Comsat's proper role. I think it is only fair to say that Comsat needs to decide what it wants to be. Congress bestowed on Comsat a monopoly in relation to international satellite channels. Subsequently, Comsat decided it wanted to be an entrepreneur, and now it is trying to be both. If it is going to be a carrier's carrier with an international satellite monopoly, it should be only that, and not be permitted to compete with the other retail carriers.

Senator GOLDWATER. Yes, Mr. White?

Mr. WHITE. Senator, I find one great fault with the wholesale approach. It is the carrier's carrier approach, plus Comsat competing with its carrier customers. It has, apart from that basic problem, the additional deficiency of calling upon the Commission to regulate the wholesale entity.

At a time when you are looking for greater competition, and more deregulation, it seems to me that a wholesaler activity—which is nothing but a pure monopoly requiring full regulation by the Commission—does not move us any closer to deregulation.

Senator GOLDWATER. That is a good observation. Does anyone else want to comment on that?

[No response.]

Senator GOLDWATER. I thank you. I think this is a very important part, and I have the feeling the FCC can direct that without legislation. We are going to explore that. Having been in the retail business myself, I do not want a competitor using the wholesale advantage over me.

Mr. Wright, you have agreements with the United Kingdom, Belgium, and Canada. Is this good evidence of a relaxation by foreign PTT's, of their reluctance to open their markets to our carriers?

Mr. WRIGHT. It is certainly an indication of some relaxation on the part of foreign administrations to be willing to interconnect with other common carriers other than AT&T. I would, however, recite, as I did in my testimony, the importance of this bill from the standpoint of endorsing a U.S. policy, procompetitive policy.

I had occasion, for example, last fall to be talking to the head of one of the foreign administrations, and he asked me at that time when I was trying to negotiate an interconnection arrangement if I could get a letter from my Government that would in fact say that this was what the U.S. Government desired. So there is still considerable confusion within the foreign administration as to what is the U.S. policy.

Senator GOLDWATER. This bill amends the Communications Satellite Act to give the FCC the authority to license additional satellite systems. Do you anticipate that each time the FCC is faced with an application for an additional satellite system, it would have to consider our existing treaty obligations, and under what circumstances would such existing obligations not be addressed?

Mr. DEMORY. Those treaty arrangements are set forth in article 14 of the Intelsat agreement. The language there is clear. It states that, should any signatory desire to utilize space segment separate from Intelsat space segment for international satellite telecommunications, it shall coordinate that use with Intelsat. So, I think the treaty obligation seems to be fairly clear. To the extent we are proposing to use separate satellite services to provide international public telecommunications services, we are obligated to coordinate with Intelsat.

[The following information was subsequently received for the record:]

COMMUNICATIONS SATELLITE CORP.,
Washington, D.C., June 9, 1983.

Hon. BARRY GOLDWATER,
Chairman, Subcommittee on Communications, Committee on Commerce, Science, and Transportation, U.S. Senate, Washingtion, D.C.

DEAR SENATOR GOLDWATER: This letter will provide COMSAT's response to points raised on the second day (May 11) of hearings on S. 999, the "International Telecommunications Act of 1983," by witnesses for RCA Global Communications, MCI Communications and United States Telephone and Telegraph Corporation. COMSAT presented its testimony on the first day (May 10) and thus did not have the opportunity to respond to the postitions taken by these witnesses on important aspects of COMSAT's role as U.S. participant in INTELSAT and its potential role as a retailer of international satellite communications services. In our view, the testimony of these witnesses contained erroneous assertions concerning these matters, as well as misinterpretations of provisions of S. 999 itself, which should not go unanswered on the record. Accordingly, we appreciate the opportunity to respond to these points and ask that the following comments be entered in the hearing record on S. 999.

Section 606—Interconnection

Section 606 of the bill would require equitable interconnection arrangements for international communications services. COMSAT generally supports the provisions of Section 606. In particular, we would call your attention to subsection (a)(3). That provision states that the "charges, terms and conditions for interconnection shall be based on [the] cost of such services or facilities provided for such interconnection." Implementation of this provision, as we interpret it, would not alter COMSAT's international business as we already provide service based on costs. However, the witnesses for RCA, MCI and United States Telephone and Telegraph have chosen to interpret this provision in a manner that would enable them to obtain satellite circuits from COMSAT at a price below its full cost. Specifically, they either asserted or clearly implied that Section 606(a)(3) would require COMSAT to offer its INTELSAT system services to other carriers at rates that are no higher than INTELSAT's space-segment utilization charges, without regard either to the full costs COMSAT incurs in providing its services or to the return to which it is entitled on its investment under well-established rate-making principles. If this is what is intended by the provision in subsection (a)(3), COMSAT strongly opposes its inclusion in Section 606. If, as we believe, the subcommittee intends no such result, we urge that it be made clear that this provision would not require any carrier to provide services below its fully allocated costs including a fair return on its investment.

Direct access

The positions taken by these witnesses on Section 606 apparently are related to proposals they have made to the FCC for some form of "direct access" to the INTELSAT space segment. The adoption of the "direct access" concept would give these carriers the right to procure INTELSAT system services from COMSAT below cost. The Commission is currently investigating this matter in Docket No. 82-548. Our reasons for opposing the "direct access" proposals are fully explained in our comments to the Commission is that proceeding, a copy of which we have made available to the Subcommittee staff.

Although the "direct access" proposals take various forms, the proponents of the concept basically seek to have their payments for COMSAT's services limited to the utilization charges INTELSAT assesses INTELSAT members for their use of the INTELSAT space segment. These charges in no sense reflect the total costs of any INTELSAT participant in providing INTELSAT system services. In COMSAT's case, for example, these charges do not include such other costs as those associated with operating and planning the United States link to the system, providing earth station facilities and services, conducting research and development activities in accordance with COMSAT's statutory responsibilities for international satellite communications, and performing COMSAT's role as the United States representative to INTELSAT, which requires the Corporation to develop positions on all aspects of INTELSAT's operations, and to coordinate with the government on matters of policy. Nor do the INTELSAT utilization charges incorporate the rate of return to which COMSAT is entitled on its sizeable investment in facilities under applicable rate-making principles.

Despite the inclusions of all of these necessary elements in COMSAT's charges for international communications satellite services, COMSAT has reduced its rates for such services substantially over the past five years. The adoption of the "direct

access" concept as proposed to the Commission would eliminate COMSAT's ability to continue providing its services on a viable basis.

COMSAT as wholesaler and retailer

In their testimony on May 11, the witnesses representing RCA, MCI and United States Telephone and Telegraph Corporation argued that COMSAT should not be allowed to serve as both a wholesaler and retailer of international communications satellite services. They expressed the concern that, as a provider of both kinds of service, COMSAT would be in position to resort to anticompetitive practices and thus would have an unfair competitive advantage over other retail carriers.

These concerns are misplaced for several reasons. The FCC has specifically required that any provision of end-to-end service by COMSAT to the public must be made through a separate, arms-length subsidiary. This requirement is consistent with section 304(g) of S. 999 that specifically authorizes the Commission to require that services offered by COMSAT directly to the public be provided "by a fully separate corporate subsidiary of the corporation." COMSAT has endorsed the requirement for an affiliate fully separate from the World Systems Division in the provision of any retail services to the public. World Systems Division would be required to provide transmission services to such a retail subsidiary on the same terms and conditions as it would provide services to other retail carriers. We submit that these safeguards, coupled with other proposed changes in the ways of COMSAT provides international satellite sevices, will both encourage a more competitive services environment and provide regulatory and marketplace protection against potential anticompetitive practices.

We look forward to working closely with your Committee as consideration of S. 999 continues.

Very truly yours,

IRVING GOLDSTEIN, *President.*

Senator GOLDWATER. Larry, are you ready?

OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. Yes, I have just a couple of questions. I will be very brief.

First, I want to apologize for being absent. We are having markups in the Foreign Relations Committee this week, and it has been hectic over there. I do have an opening statement, and then I have two questions.

As a cosponsor of S. 999, I commend the chairman of this subcommittee for once again providing leadership on an issue which deserves serious scrutiny from Congress. Until recently, international trade issues have been a concern of a few companies and a few experts in the country. That American market dominance and economic strength have masked the need for a cohesive U.S. trade policy. Times have changed. The grain embargo, the recession, the growth of foreign competitors nurtured by protective policies in their governments, the loss of American jobs and revenues resulting from unfair competition have all made a difference.

In the last months, Congress has recognized the need for action. A recent Washington Post series on competition in the international high tech market documents the need for action. The United States has always been generous with its wealth and resources, but Congress has an immediate obligation to rethink our trade policies and the bureaucracy which creates these policies.

S. 999 has several purposes. First of all, this bill advocates marketplace competition to determine wherever possible the kinds of international telecommunications services and facilities that are provided. S. 999 proposes a new executive branch position to coordinate policy. Everyone in this field has told me that something must be done about the absence of effective policymaking. S. 999 is an

effort to do something. How does the Federal Government establish policy, coordinate conflicting bureaucratic influences, and present a united, coherent position to the rest of the world? The answers to these questions are not encouraging.

If we do not tackle this problem, American technology and American marketplace initiative will not be adequate to maintain our leadership in telecommunications. I am very interested in the comments of our witnesses on the Special Representative's proposal. I hope these experts will provide useful suggestions to help this subcommittee find a solution.

Again, I want to thank the chairman for his leadership, and I look forward to working with him on this pressing matter.

I have two questions. One is for Mr. Murphy of RCA Global Communications. What is the most serious obstacle in your opinion facing American telecommunications companies in the international marketplace? FCC Chairman Fowler testified yesterday that this is our third largest industry in international trade and our fastest growing industry. I for one do not want to see the competitive initiative lost because of confused Government policies.

Mr. MURPHY. Senator, from the RCA point of view, the most serious obstacle that we see at the present time is the one I just referred to earlier, namely, that we are in a position where the Communications Satellite Corp. is being authorized by the FCC to provide retail services in the international marketplace while at the same time being allowed to maintain a monopoly in a wholesale market, that is, providing the international space segment on a monopoly basis to the retail carriers. It then competes with those retail carriers in providing service to the public.

If we are going to see the advantages of competition here, then it has to be competition on a fair basis.

Senator Goldwater indicated a moment ago that he thought the FCC probably had authority to take action in this area, and I think that is correct, but the fact of the matter is that the Commission has authorized Comsat to provide service to retail customers, but has not taken action to authorize the other carriers to have direct cost based access to the international space segment, or to construct and operate their own Earth station with the space segment directly.

I think that is the most important obstacle, because without it, it is going to be very difficult to have a truly competitive marketplace in the international area.

Senator PRESSLER. Mr. Nichols, I understand you were on the U.S. delegation to the ITU conference last fall in Nairobi. I commend you for your efforts on our behalf during that 6-week conference. What were your observations as a member of the private sector for the calls for a reassessment of U.S. participation in the ITU?

Mr. NICHOLS. Senator, the thing that I enjoyed most about my participation in Nairobi was the fact that I was only there for half the time.

The ITU has become so politicized that it is almost impossible to get any work done along the lines for which it was originally intended, which is to set standards for communications so that one country can communicate with another.

Senator PRESSLER. What is the political aspect? Are they trying to throw Israel out, and they failed by four votes? Do they adopt resolutions about everything except communications? How did they tie that in with communications?

Mr. NICHOLS. Let me be frank. During the first 2 weeks I was there, the first 10 working days I was there, the only thing that was actually accomplished was to elect the secretary general and his deputy. The rest of the time, almost every delegation, and there were about 130 of them, had to make a 20-minute or a half-an-hour speech congratulating the chairman of that particular conference on having been elected chairman. This fellow was the deputy minister of communications from Kenya. Who else are you going to elect? But everybody had to make a speech just to get his name on the record and the name of the country, and we sat there and listened to that for 10 full working days.

In addition, of course, we did get into bloc voting, particularly on the Israeli issue, and what we found was the developing countries want more financial help in the way of training and equipment to improve their networks. That is very understandable.

But what we are now faced with in the ITU is one nation, one vote. The smaller countries put up relatively small amounts of money so they can, for example, get together and vote to increase the budget, and the larger countries, like the United States and like Russia, to be fair, have to come up with the increase in funds. There is no weighted voting at all.

Senator PRESSLER. It is like UNCTAD and UNESCO. We are having some hearings in one of our subcommittees of foreign relations about exports of food, pharmaceuticals, and other things. It is sort of an international consumer protection group formed in the United Nations that is causing a great deal of difficulty with exports because it places very unreasonable demands on the developed countries, profit sharing and so forth, things that seem to come out of the blue and will not work, and the countries that are demanding these are, of course, against profits.

But the point is, the system will not work. It will just break down. Is that same thing happening in ITU? Are we heading in that same direction by being active in ITU, or do we have to stay in it and struggle?

Mr. NICHOLS. I think we should stay in it and struggle for the time being, but I have been advocating that we also look for possible alternatives. The subcommittees are the ones that are actually the active ones. The CCITT, the CCIR, the Radio Frequency Board. We need those without any question. Whether we need the parent body I strongly question.

One of the things done at this particular meeting was to come to the conclusion and adopt the resolution that says that the chairmen of each of the subcommittees henceforth would be elected at the ITU plenipotentiary. Right now they are elected by their peers within the CCIT or within the CCIR. This means that the next time the election comes along, it will be fully politicized. Instead of getting technically qualified individuals there, he will be put in based upon the political bloc that wants him, and he may or may not be qualified. And it gives me great concern.

Senator PRESSLER. In terms of our companies operating, are they putting taxes on us? Are they advocating sharing? What are some examples of the bad policy ramifications? So what if the guy is political? I mean, what are the bad things for our companies that will result, for example?

Mr. NICHOLS. The CCIT, for example, sets standards for the means of communicating from one country to another, the type of signal, the transmission medium, et cetera. The cold fact is that if you get the wrong individual in there, he can be bought, particularly if he is not well qualified. You might even be able to buy some of his staff. And if you can, and it could very well happen, standards will be set that will benefit one country or even one company.

Now, there has been no evidence of that to my knowledge so far, but to take it a step further, they could set standards that would specifically benefit the developing countries at the expense of the developed countries. All kinds of things could happen if you do it on a political rather than on a technical basis.

Senator PRESSLER. And your final recommendation that we stay in ITU and try to do the best we can, should we be doing something in terms of insisting that more U.S. people be on the staff there at ITU? Is there anything we can do in Congress in terms of funding that we can attach requirements?

Mr. NICHOLS. I would not recommend any requirements. I think that we very definitely need to continue to be active, but mostly in the subcommittees. As far as having more people in the staff, I do not think that will necessarily help, but I would remind you when I said we should stay in the ITU, I also feel very strongly that we should continue to look for possible substitutes, just in case. We do not want to be caught short. And I believe there are substitutes.

Senator PRESSLER. Thank you very much. I think your thoughts on that are important. I am glad you went over there. I thought of going over, but decided against it. But we need good people to go to some of these international meetings, but I have been to a few, and it is tough to listen to all those speeches.

Senator GOLDWATER. Thank you, Larry. As we become more and more international, we run into this. We now have 153 countries to deal with, and it will not be easy. Gentlemen, since time is a little short, I have just three general questions left, and I will ask the staff to make them available to each of you, and you may submit them in writing.

I want to thank you for appearing. I think you have given us a lot of good ideas. We are trying to bring this legislation up to the point where it will be workable and acceptable. Thank you very much.

And now, the final witnesses will be Mr. Phillip Onstad, assistant to the president and general counsel, Control Data Corp., and Ms. Joan Spero, vice president, international corporate affairs, American Express Co.

Welcome.

Ms. Spero, I will start with you, and I will tell both of you, if you want to deviate from your prepared text, and you do, your text will be placed in the record. You may go any way you want, so shoot.

STATEMENTS OF JOAN E. SPERO, VICE PRESIDENT, INTERNATIONAL CORPORATE AFFAIRS, AMERICAN EXPRESS CO.; AND PHILLIP C. ONSTAD, ASSISTANT TO THE PRESIDENT AND GENERAL COUNSEL, CONTROL DATA CORP.

Ms. SPERO. Thank you, Mr. Chairman, and Senator Pressler.

I am Joan Spero, vice president for international corporate affairs at American Express Co. I want to thank you for this opportunity to present the business user's perspective on U.S. international telecommunications policy.

I also want to commend you, Mr. Chairman, for pressing forward to develop a responsive policy environment and organizational structure.

Mr. Chairman, I would like to submit my written testimony for the record, and as you have offered, summarize certain of my comments.

Senator GOLDWATER. Yes.

Ms. SPERO. In my written testimony I discuss in some detail the importance of international telecommunications to American business users, the problems of business users and the need to include the user perspective in U.S. international telecommunications policies.

This morning I would like to focus on what business users need from Government, the extent to which S. 999 addresses those needs, and additional ways of strengthening U.S. policymaking in U.S. telecommunications and information.

Well, what do business users need from Government? First of all, we need a Government that can act on our behalf when appropriate in dealing with other governments and government agencies.

Why do we need the U.S. Government? Because in most countries we are dealing with governmental telecommunications authorities, not private companies. It is a question of the deregulated American market interacting with countries where the market is government regulated. To put it mildly, there is an imbalance in the negotiating position between a private company and a foreign government.

Second, we need remedies for discriminatory treatment. To get remedies we need domestic law that mandates Government action and gives Government the tools for action. We need internationally agreed upon rules, negotiating processes and effective institutions.

At this time business users have few, if any, remedies to counter arbitrary and discriminatory actions in the area of communications and information.

Third, users need attention to the issues at a high level, not necessarily a single high level but multiple high levels. In our view the issues demand prominence, expertise, continuity of management, and negotiating authority.

As things now stand, the response of the U.S. Government to the problems of telecommunications users is highly fragmented. Let me give you an example.

In 1982, West Germany passed a law requiring users of international leased lines to carry out some data processing in Germany. We and other companies, and I might add a host of lawyers, found it difficult to understand the requirements of the law and to decide

how to respond. We did not know where to turn for information, let alone for help, from the U.S. Government.

Would we go to the Commerce Department? Well, Commerce can make technical recommendations, but it has no negotiating authority. It has taken a particular interest in telecommunications, but it has shown less and less interest in international telecommunications issues.

Do we go to the FCC? Well, the FCC has shown, from our viewpoint, no significant interest in the international business user. Also, the FCC lacks the ability to negotiate internationally, and it has a tendency to disregard the realities of the international telecommunications environment.

Well, should we go to the State Department? But, which of the many information and telecommunications offices spread throughout the department and which of the constantly changing cast of characters should we call?

The State Department has the authority to negotiate government to government, but its mandate is not to deal specifically with industry grievances.

How about the U.S. Trade Representative? The USTR has the much needed negotiating authority when it comes to the needs of business, but in the area of telecommunications and information, the USTR does not have the staff, resources or expertise to help us out.

Mr. Chairman, S. 999 moves us forward on the road to an effective governmental structure by creating an Assistant Secretary of State for Telecommunications Affairs. I think the bill should go further in clarifying the role of the State Department and mandating the consolidation of many of its telecommunications and information functions under this office.

Further, S. 999 must address the issue of trade negotiating authority. For some time we have expressed the belief that economically motivated barriers to information flow should be treated in a trade context. One piece of the government structure must have the negotiating authority and capacity to deal with communications and information barriers as trade issues.

The office of the U.S. Trade Representative has that authority and potential capacity. USTR has the mandate, negotiating expertise and clout in representing business users internationally. What it must have in addition are the proper resources and technical staffing.

The Commerce Department as an adviser on policy and technical matters also has an important role to play and one which I think could be further elaborated in S. 999; that is, the creation of a top-flight technical unit that builds on the existing National Telecommunications and Information Administration.

Mr. Chairman, what I have been discussing are organizational problems addressed by S. 999, and I have only addressed those in a limited way. But I want to mention an equally important dimension.

I think we have to pay special attention to the caliber of professionals involved in policymaking, the ones who will draft the policy and administer it. They must have genuine expertise in the field,

and they must give their undivided attention to dealing with the entire array of national needs and concerns.

In addition, as many other witnesses have pointed out this morning, an effective policy cannot be developed unilaterally. We strongly agree with your view, Mr. Senator, that both international services and the facilities by which they are delivered are provided jointly with foreign nations, and that the United States cannot unilaterally deregulate the provision of international services and facilities.

Thank you very much, Mr. Chairman.

[The statement follows:]

STATEMENT OF JOAN E. SPERO, VICE PRESIDENT, INTERNATIONAL CORPORATE AFFAIRS

Mr. Chairman and distinguished members. My name is Joan Spero and I am Vice President for International Corporate Affairs at American Express Company. I want to thank you for this opportunity to present the user's perspective on U.S. international telecommunications policy and its governing framework. I also want to commend you, Mr. Chairman, for pressing forward to develop a responsive policy environment and organizational structure.

American Express Company believes the subject of telecommunications is an extremely vital one, both within the United States and internationally, but we also believe the subject has been widely misperceived. Public discussion has traditionally focused on two groups: the carriers or companies that operate the world's vast communications systems, and the manufacturers of the equipment and software that make the systems possible. The carriers and manufacturers, however, represent only the tip of the proverbial iceberg. The submerged part of the iceberg, which of course is much larger, represents the users of those facilities.

Who are these users? Banks, manufacturers, insurance companies, accounting firms, oil companies and travel service organizations all are users. Individual people with no business interests also can be users. American Express is one user and that is why we are here today, to represent the business users whom we believe are major players in the telecommunications field. American Express uses telecommunications for the delivery of financial, travel and information services. All our principal businesses—insurance, payment systems, asset management, international banking and securities—must move information across national borders with speed, accuracy, reliability and security. We could not function without rapid, unhindered global communications. for example: We process 350 million American Express Card transactions annually; we authorize 250,000 of those transactions each day from throughout the world within an average response time of 5 seconds; we verify and replace lost or stolen Travelers Cheques sold by more than 100,000 banks and other selling outlets around the world; we access reservation systems and travel service data bases from offices in more than 125 countries; we complete 56 million insurance premiums and claim transactions annually; we execute approximately $10 billion a day in international banking transactions, in the form of money transfers, letters of credit and foreign exchange transactions; and we respond virtually instantaneously to 500,000 daily messages directing high-speed trading in securities, commodities, bonds, Treasury bills and a host of other items.

This diversity of services and networks relies on every form of communications media: private leased lines as well as public data networks; cable, microwave and satellite transmission, and, soon, experimentally, optical fiber. Telex and voice communications play major roles in addition to on-line data transmission. In the future, however, private integrated networks will carry both voice and data traffic. For American Express the cost of developing, operating and maintaining these information processing systems and communications networks ranges between $300 and $400 million annually. Among major international companies this expenditure is hardly atypical.

The fact is, telecommunications including data transmission are the life support system for my company, as well as for many other companies that represent the highest growth sectors in the American economy. These sophisticated, international companies rely particularly heavily on leased lines. For us, preserving access to these leased lines is crucial. The biggest banks, the largest producers of goods and the major movers of people, goods and services rely on leased lines as one of their most indispensable tools. How does this translate? It translates into jobs and trade and into the rebuilding of our economy.

But these users are confronted with a growing array of problems. One of the most disturbing trenes is the growth of arbitrary, discriminatory and unilateral actions of governments that impede information flows, eliminate choice in the market-place and reduce the services that are available. This has the net effect of increasing costs, decreasing efficiency and making international users of communications less competitive.

Restrictions, or threatened restrictions on the activities of international users have proliferated. More often than not, they resemble classic tariff and non-tariff barriers to trade. They include: Discriminatory pricing of data transmission services; local content laws requiring the processing of data within the country of origin as a condition of the user's transmission requirements; mandated use of national data networks, eliminating the element of choice in the marketplace; restrictions on the use of leased lines that deny the user the ability to offer competitive services; and emerging policies which can provide the basis for customs duties and value added taxes on classes of information as it crosses national borders.

In the face of these problems, we and other users have desperately few places to turn for the kind of effective help we need. In most countries, we are dealing with governmental telecommunications authorities, not private companies. It is a question of a deregulated American market interacting with countries where the market is government-regulated. To put it mildly, there is an imbalance in a negotiating position between a private company and a foreign government.

This brings me to the central message I would like to leave with you today. In the absence of other recourse, we need a U.S. government that can act on our behalf, when appropriate, in dealing with other governments and government agencies.

Secondly, we need remedies for discriminatory treatment.

To get remedies, we need domestic law that mandates government action and gives government the tools for action. We also need internationally agreed rules, negotiating processes and institutions. At this time, business users have few if any remedies to counter arbitrary and discriminatory actions in the area of communications and information. The principle of "free flow of information" on which U.S. policy is based is too often simply that—a principle, without teeth and without force in domestic and international law and practice.

Third, we need attention to the issues at a high level—not necessarily a single high level, but multiple high levels. Just as information is used differently by all facets of society, it also plays a role throughout the structure of government. What is needed is recognition by government of the critical importance of telecommunications and information to the future of this country, and a corresponding response. The issues demand: Prominence; expertise; continuity of management, and negotiating authority. As things now stand, the response of the U.S. government to the problems of telecommunications users is fragmented.

Do we go to the Commerce Department? Commerce can make technical recommendations but has no negoitiating authority. It has taken a particular interest in telecommunications, but is showing less and less interest in information issues such as privacy.

Do we go to the FCC? Despite its public interest standard, the FCC has shown no significant interest in the user public—that huge portion of the national business iceberg. Furthermore it lacks the ability to negotiate internationally. And it has demonstrated a tendency to disregard the realities of the international telecommunications environment—to ignore the dangers to users inherent in bucking government-owned PTT monopolies at the other end of almost every circuit.

When we have an international telecommunications or information problem, should we go to the State Department? But which of the many information and telecommunciations offices spread throughout the department and which of the constantly changing cast of characters should we call? Telecommunications and information should be an integral part of foreign policy making and the State Department has the authority to negotiate government to government, but its mandate is not to deal with specific industry grievances.

Do we call the U.S. Trade Representative? The USTR has the much needed negotiating authority when it comes to the needs of business. But in the area of telecommunications and information, the USTR does not have the staff, resources or expertise to help us out.

I would like to emphasize that S. 999 moves us forward on the road to an effective governmental structure by creating an Assistant Secretary for Telecommunications Affairs. I believe the bill must go further, however, in clarifying the role of the State Department and mandating the consolidation of many of its telecommunications and information functions under this office. Only in this way can State effectively work toward developing international strategis for its role in the ITU, the

OECD and other international rulemaking bodies, and for its role in negotiating bilateral agreements.

Further, S. 999 must address the issue of trade negotiating authority. For some time, we have expressed the belief that economically motivated barriers to information flows should be viewed in a trade context. As telecommunications and information have become increasingly competitive among nations, these once largely technical fields have been subjected to a widening array of protectionist actions. One piece—and an essential piece—of the government structure must have the negotiating authority and capacity to deal with communications and information barriers as trade issues.

Among the agencies and departments, the Office of the U.S. Trade Representative has that authority and potential capacity. It has been the place where users most often could bring their grievances—and of equal importance—get attention. USTR should continue to carry the responsibility for the negotiation of trade barriers to telecommunications and information. The USTR has the mandate, negotiating expertise and clout in representing businesses internationally. Moreover, it is the recipient of trade problems of all industries—all users of telecommunications. What it must have additionally are the proper resources and technical staffing. With these, the Trade Representative has the capacity to play an essential role in shaping telecommunications policy that is responsive to national interests, yet sensitive to the international environment from which national telecommunications policy cannot be divorced.

The Commerce Department, as advisor on policy and technical matters, also has an important role not dealt with in S. 999—namely, the creation of a top-flight technical unit that builds on the existing National Telecommunications and Information Administration.

Legislation should provide for adequate resources in this critical field. Moreover, it should clearly mandate the NTIA's much-needed leadership role in the conduct of research on the full array of international telecommunications and information issues.

What I have been discussing are organizational problems, the question of how S. 999 should structure the government so that it can better respond to the needs of telecommunications users. There is another equally important dimension, however, to this process. That is the need for an effective policy. No matter what structure you create, the men and women who fill those positions will be severely constrained unless they know what it is they are doing.

This means we must pay special attention to the caliber of the professionals who are involved, for it is they who will draft the policy and administer it. They must possess genuine expertise in the field and they must give their undivided attention to dealing with the entire array of national needs and concerns.

An effective policy cannot be developed unilaterally, as in a vacuum. It must be based upon the recognition that the world's telecommunications system is an international creature by definition. We strongly support the view of Senator Goldwater that "both international services and the facilities by which they are delivered are provided jointly with foreign nations" and that the United States cannot "unilaterally deregulate the provision of international services and facilities." I would urge that this be a guiding determinant of future FCC activity in the international sphere. It must recognize that basic and often value-added telecommunications services in other countries are sovereign national responsibilities. International enhancements must therefore be encouraged by mutual consent and negotiation. U.S. policy should serve to establish the U.S. market as a shop window for the world, but it cannot enforce another country's decision to buy.

In sum, national legislation must take the long view. It must equip us with a truly international policymaking structure that not only meets the needs of U.S. users but also responds to the concerns of foreign governments and foreign users when dealing with this market. We think such legislation, if effectively implemented, could have a profound impact on the ability of American companies, whether they be carriers, manufacturers or users, to compete in the international marketplace.

Senator GOLDWATER. Thank you very much, Ms. Spero.

Mr. Onstad.

Mr. ONSTAD. Thank you.

I am Phillip Onstad, assistant to the vice president and general counsel to Control Data Corp. My responsibilities at Control Data include representing my company's interests in the area of domes-

tic and international telecommunications information and policies. I will summarize my prepared testimony.

I am a member of a number of telecommunications committees and user organizations as a representative of my company. I have had the pleasure of serving as a member of the U.S. delegation to the CCITT for a number of years, and last year I was also a member of the U.S. delegation to the plenipotentiary conference of the ITU which engaged in redrafting the international convention under which the ITU operates. I have been involved in telecommunications and information policy for a number of years.

Control Data Corp. is a provider of information processing systems and information processing, financial, and educational services. It utilizes and is dependent on all types of domestic and international telecommunications services to deliver many types of remote access information processing and data base services worldwide.

Speaking from experience gained from many years of direct negotiations with foreign telecommunications administrations on behalf of my company and based on the experience of the associations I have represented, it is my opinion that aside from a very few individuals, there is very little understanding within the agencies of our Government regarding international and foreign telecommunications policies and practices, and the enormous effect changes in telecommunications policies can have on many U.S. businesses.

There is also very little understanding of the critical but increasing importance of the availability of unrestricted state-of-the-art telecommunications to the future of our Nation and to achieving such national goals as improving foreign trade and also national security.

Over the past few years the United States has moved forward to establish a highly competitive domestic telecommunications industry and has removed many of the prior regulatory restraints to make this possible. We are now seeing a strong emphasis on the part of the Federal Communications Commission and other agencies to move this competition into the international telecommunications arena.

We, as large users of telecommunications services, totally agree with this objective. However, this country must exercise extreme care that our efforts to install competition in international telecommunications not result in retaliation by foreign governments which could jeopardize the operations of the highly competitive industries which are totally dependent upon telecommunication services. Such actions could result in the loss of hundreds of millions of dollars of revenue and have a serious effect on the balance-of-payment situation which is plus at the present time.

Although many foreign nations have legitimate concerns about the use of their telecommunications facilities and the protection of data involving their citizens, other nations have imposed unreasonable restrictions on telecommunications services and the transfer of information across their borders in order to protect their own industries from foreign competition.

Many U.S. private sector companies are frustrated when they attempt to offer their telecommunications services on an internation-

al basis because of the numerous regulatory restrictions imposed by foreign PTT's. Although these restrictions were first encountered by members of the information industry, the problems now affect users in other industries such as banking, securities, and insurance.

There are those who consider the international telecommunications and the free flow of information to be only a trade issue which should to be treated as such. I disagree. These issues involve not only trade in services and products, but also national security and foreign policy.

There are also those who feel these are narrow issues involving only the companies which offer information processing services on an international basis. I disagree. Consider the increased use of telecommunications and information flow by all U.S. corporations involved in international markets irrespective of the kind of services or products involved. The availability of unrestricted state-of-the-art communications services is vital to coordinate such companies' worldwide operations. Consider further how critical unrestricted state-of-the-art communications services are to our national security and the exercise of overall foreign policy.

Although the attitude of many foreign PTT's frustrates the U.S. ambitions for a competitive market in international telecommunication services, it must be considered at the time a fact of life. I do not consider this present reality impossible to change in the long run. We are currently seeing changes of attitude in Great Britain, and with well-planned negotiations between our government and other national governments, this trend may be encouraged in other nations.

However, if the United States attempts to impose its procompetitive position on other sovereign nations on a unilateral basis without prior negotations, the retaliatory reactions of foreign countries may be very serious. We believe it is essential that a structure be established within the executive branch with the statutory authority and responsibility to develop, implement, and manage a comprehensive, coordinated international telecommunications policy.

Mr. Chairman, you recently introduced S. 999, the International Telecommunications Act of 1983. I commend you, your cosponsors and your staff for introducing thoughtful legislation which we believe will establish a framework for solving many of the problems that I have covered.

During the past year there has been a major movement within the Department of State which has resulted in the establishment of the position of Coordinator of International Telecommunications and Information Policy reporting to the Under Secretary of State for Security Assistance. Action has also been taken to provide a small staff for this operation.

We, as well as many other members of our industry, are extremely pleased with this action and give it our total support. The position of coordinator has been filled by Diana Lady Dougan who has also been appointed an Ambassador for International Telecommunications and Information Policy, an appointment which recognizes the importance of this office and its function.

In addition, there are two advisory committees established within the State Department to work on international telecommu-

nications and information issues. Significant active participation in the work of these committees by diverse elements of both the private and public sector demonstrates the importance of these issues to the private sector.

The U.S. Preparatory Committee to the International Telecommunications Union is an open membership committee which brings together individuals who represent the user community, manufacturers of equipment, international and domestic common carriers, and those Government agencies involved to develop proposed U.S. replies to proposals submitted to the CCITT and CCIR by other nations.

I think it is particularly significant that this committee, which represents many points of view, is able to discuss a wide range of subjects on a businesslike basis and are able to develop final positions which take all views into consideration. Thus, when a U.S. position is presented to the CCITT, it has the support of all members of the Preparatory Committee.

The Subcommittee on Transborder Data Flows of the Department of State, another advisory committee, considers matters involving the free flow of information across national borders.

Control Data fully supports the efforts of the Department of State to increase its effectiveness in managing and coordinating international telecommunications information issues. However, we are aware and concerned that these functions have been established by administrative means rather than by statute and are subject to continual substantive changes or changes in the level of attention given to these most critical issues.

S. 999 moves to establish a structure to bring together directly under the Executive Office of the President these fractionated responsibilities and authorities inherent under the current structure and to more permanently establish this responsibility.

We believe this is absolutely essential if our nation is to develop and maintain comprehensive policies to address these critical issues consistent with the requirements of our total foreign policy.

S. 999 also establishes a system of checks and balances for reports to the Congress to track the progress of these changes. As we have stated previously, we give total support to the Department of State in its recent actions to discharge its responsibilities under current Presidential directives with respect to international telecommunications and information issues.

We believe strongly that this action in no way conflicts with the structural proposal set forth in S. 999. Rather, it supports the concepts of S. 999 by building a nucleus of expertise necessary under your proposed structure.

My comments this morning have been limited to the portions of S. 999 which deal with the structure for international telecommunications and information policymaking. We have prepared a number of detailed comments on other parts of S. 999 which have previously been supplied to the committee staff.

My comments in this area do not address the satellite or cable portions of the bill. However, if it is possible, we would like our comments considered as a part of the record.[1]

---

[1] See p. 191.

Thank you, Mr. Chairman, for allowing me to comment on this most important legislation. I will be happy to answer any questions and will be happy to work with your staff in any way.

[The statement follows:]

STATEMENT OF PHILLIP C. ONSTAD, ASSISTANT TO THE VICE PRESIDENT AND GENERAL COUNSEL, CONTROL DATA CORP.

Good morning, Mr. Chairman and Members of the Committee. I am Phillip C. Onstad, Assistant to the Vice President and General Counsel, Control Data Corporation. My responsibilities at Control Data include representing my company's interests in the areas of domestic and international telecommunications and information policies. I am chairman of the International Relations Committee of the Association for Data Processing Service Organizations (ADAPSO), and represent Control Data Corporation as a member of the Telecommunications Committees of The Computer and Business Equipment Manufacturers Association (CBEMA), The United States Council for International Business, the International Chamber of Commerce and the United States Preparatory Committee for the International Telecommunications Union (ITU).

I am a member of the Regulatory Liaison Committee of the International Communications Association and have had the pleasure to serve as a member of the United States delegation to Study Groups of the Consultative Committee for International Telegraph and Telephone (CCITT) of the ITU for a number of years. Last year I was a member of the United States delegation to the Plenipotentiary Conference of the International Telecommunications Union, which engaged in redrafting the international convention under which the ITU operates. I have been involved in telecommunications and information policy matters for the past eleven years. I am testifying on behalf of Control Data.

Control Data Corporation is a provider of information processing systems and information processing, financial and educational services. It utilizes and is dependent on all types of domestic and international telecommunications services to deliver many types of remote access information processing and data base services worldwide. Although Control Data is vitally concerned with the protection of data entrusted to it by clients, it is also concerned with attempts by many nations to obstruct the free flow of information across national borders which often take the form of artificial trade barriers.

Many United States private sector companies are frustrated when they attempt to offer their services on an international basis because of the numerous regulatory requirements imposed by foreign nations upon telecommunications services. Although these restrictions were encountered originally by members of the U.S. information processing industry, the problems now affect users in other industries such as banking, securities, and insurance.

Although many foreign nations have legitimate concerns about use of their telecommunications facilities and protection of data involving their citizens, other nations have imposed unreasonable restrictions on telecommunications services and the transfer of information across their borders in order to protect their own industries from foreign competition.

The problems faced by United States companies are further complicated by the fact that foreign nations have developed and enforced stringent policies and practices in the areas of telecommunications and data protection. This has been accomplished through centralized federal data protection agencies and complete ownership and/or control of the nation's telecommunications systems. Thus, a United States private sector company is forced to deal directly with a foreign government to obtain necessary telecommunications services as well as authorizations to transmit data across a national boundary. This is an unequal contest. This is particularly true because frequently the government-owned telecommunications system (PTT), is a provider of information processing services and resists the outside competition from the U.S. private sector company.

When a U.S. company comes to the United States government for help and/or advice on how to solve these problems, it soon finds that responsibility and authority for international telecommunications and information matters are fractionated, divided among many departments and agencies of the federal government. The company finds itself being bounded from one agency or department to another without obtaining relief.

If a company is large enough or can spend the time (which often runs into years) in meetings with foreign government authorities or it can afford substantial legal

assistance to pave the way, it may eventually get into business in the foreign country or reach some resolution of its difficulties. However, as has been stated by many who have testified over the years on this subject before other congressional committees, most companies cannot afford the time or the cost of getting their problem resolved, and instead drop out of contention. This result not only causes loss of U.S. leadership in the service industries but also have a detrimental effect on the U.S. balance of payments.

I believe that the government as well as the private sector together suffer the cost of this policy confusion and inaction due to this lack of coordination within the government. I think there is a loss of able personnel within the Federal Government because of the lack of an overall definitive direction and policy regarding these issues. Many talented individuals within the agencies or departments involved leave the government after becoming frustrated with the lack of direction and the division of responsibility and authority for addressing these critical issues.

It is our opinion that the absence of central authority and direction contributed to the confusion of the Federal Communications Commission in its Computer Inquiry II decision wherein the FCC applied its basic/enhanced service dichotomy and its domestic policies dealing with the deregulation of enhanced services to international services. This unilateral action by the Commission, without previous discussions with other nations or foreign regulatory authorities or an analysis of the possible effects of its action, may cause retaliatory response by the foreign PTT's, jeopardizing the use of essential international leased line services by the United States users. This problem might have been avoided had the FCC been staffed to perform comprehensive analyses and had sought and obtained information from the other involved government agencies regarding the potential overall effect of its decision before its action was taken. It might be further noted that although this matter has caused substantial reaction from the private sector, requests for reconsideration and stay of the decision, as well as many meetings with the Commission and the Staff, and requests for action and comment from the principal executive departments involved, the industry has seen little or no public response to date.

Speaking with the experience gained from many years of direct negotiations with foreign telecommunications on behalf of my company and the associations I have represented, it is my opinion, that, aside from a very few individuals, there is very little understanding within the agencies of our government regarding international and foreign telecommunications policies and practices. There is also very little understanding of the critical and increasing importance of the availability of unrestricted state-of-the-art telecommunications to the future of our nation, and to achieving such national goals as improving foreign trade and national security.

There are those who consider international telecommunications and the free flow of information to be trade issues and to be treated as such. I disagree. There are issues that involve not only trade in services and products, but also national security. There are those who feel that these are narrow issues involving only the companies which wish to offer information processing services on an international basis. I disagree. Consider the increasing use of telecommunications and international information flow by all U.S. corporations involved in international markets irrespective of the kind of services or products involved. The availability of unrestricted state-of-the-art telecommunications services are vital to coordinate such companies' worldwide operations. Consider further how critical unrestricted state-of-the-art telecommunications services are to our national security.

Our government must have a thorough knowledge of the aims and objectives of foreign telecommunications administrations and data protection agencies. For example, with very few exceptions, foreign telecommunications services are provided and/or controlled by the foreign governments. Unlike the United States' objective of free and open competition, their objective is total monopoly. Foreign nations (with virtually no exceptions) are totally opposed to any type of competition which may erode their telecommunications revenue base which is used to subsidize the operation of, for example, the national postal service, a costly labor intensive service. Accordingly, most foreign nations would prefer to operate with a single United States telecommunications entity, and thereby reduce the cost of administration and accounting required in dealing with multiple United States carriers. Many foreign countries feel that traffic will remain static if there are one or one hundred carriers on the other (United States) end of an international service and that doing business with additional carriers only tends to increase their costs and accordingly the rates they must charge to provide services. When the possibilities for increased traffic and increased revenues brought about by new entrants are discussed, the foreign authorities express the view that such new services can be offered by those entities already established, without adding costs and rates associated with new carriers.

Although this attitude frustrates the United States' competitive ambitions, it must be considered a fact of life at this time. However, I do not consider this present reality impossible to change on a long term basis. We currently are seeing a change of attitude in Great Britain and, with well planned negotiations between our government and other national governments, this trend may be encouraged in other nations. However, if the United States attempts to impose its pro-competitive position on other soverign nations on a unilateral basis without prior negotiations, the retaliatory reactions of foreign countries may be very serious.

The United States' definition of telecommunications is not the same as that of the international telecommunications community. In the Computer Inquiry II decision the Federal Communications Commission divided services into two distinctive categories. It defined basic transmission service as "one that is limited to the common carrier offering of transmission capacity for the movement of information." Second Computer Inquiry, 77 F.C.C. 2d, 384, 419 (1980) (Final Decision). It then defined enhanced services as any service which was not considered basic. Enhanced services therefore include many services which were considered to be telecommunications services in the past, but also includes many services, such as information processing and data base services, which were never considered telecommunications services in the past. The Computer Inquiry II decision further directed that basic service would remain under full Title II regulation under the Communications Act of 1934. However, it directed that enhanced services, including those enhanced services which were subject to Title II regulation prior to the decision, would be considered removed from all Title II regulation.

These definitions are acceptable for services offered within the domestic United States where the Commission has jurisdiction over the entire service, including the service initiator and the receiver, that is, both ends of the service. However, this approach is in direct conflict with the definitions contained in the rules and regulations of the foreign telecommunications administrations and also is in conflict with the definitions contained in the Recommendations of the CCITT, which are internationally accepted guidelines. Some feel the U.S. definitions may also be in conflict with those contained in the Convention of the International Telecommunications Union, a treaty which the Congress has ratified.

We hope that the above discussion will convince you of the critical importance of developing, implementing and managing a comprehensive international telecommunications and information policy for the United States, which recognizes that these major issues involve many critical sub-issues including foreign trade, national security and foreign policy.

We believe that it is essential that a structure be established within the executive branch with the statutory authority and responsibility to develop, implement and manage for the United States such a policy.

We believe that it is essential that such a structure have expertise within it or available from other government agencies to allow it to perform its functions in a knowledgeable and efficient fashion.

Mr. Chairman, you recently introduced S. 999, the International Telecommunications Act of 1983. I commend you, your cosponsors and your staff for introducing thoughtful legislation which we believe will establish a framework for solving many of the problems I have covered. I will direct my remarks to the structural proposals of S. 999.

During the past year there has been major movement within the Department of State, which has resulted in the establishment of the position of Coordinator for International Telecommunications and Information Policy, reporting to the Under Secretary of State for Security Assistance. Action has also been taken to provide a small staff to this operation. We, as well as many other members of our industry, are extremely pleased with this action and give it our total support. The position of Coordinator has been filled by Diana Lady Dougan, who has also been appointed Ambassador for International Telecommunications and Information Policy, an appointment which recognizes the importance of this office and its functions.

In addition, at the present time there are two advisory committees which were established within the State Department to work on international telecommunications and information issues. Significant active participation in the work of these committees by diverse elements demonstrates the importance of these issues to the private sector.

The United States Preparatory Committee to the International Telecommunications Union works within the telecommuncations area. The Committee is composed of many sub-committees and is structured to match the more important study groups of the CCITT and CCIR (Consultative Committee on International Radio). Substantial time and effort is devoted to the work of these committees by their

members, who represent the user community, manufacturers of equipment, international and domestic common carriers, and those government agencies which are users or policy makers in the area of telecommunications services. The groups also develop proposed United States' replies to the proposals submitted to the CCITT or CCIR by other nations and develop proposals for submission to the CCITT or CCIR by the United States. It is particularly significant that the committees, which represent many points of view, are able to discuss a wide range of subjects on a business-like basis and are able to develop final positions which take all views into consideration. Thus, when the United States' position is presented to the CCITT or CCIR, it has the support of the U.S. Preparatory Committee.

With reference to the United States' involvement in the work of the study groups of the CCITT and CCIR, the delegations attending the meetings of the study groups are comprised of individuals from both government and the private sector. Delegates to the study groups involving the establishment of technical standards are experts in their field, drawn from some of the largest high technology corporations in the country. Delegates to the study groups involving the establishment of policy are experts in legal and regulatory matters drawn from both the government and private sectors.

The Subcommittee on Transborder Data Flows of the Department of State Advisory Committee on International Investment, Technology, and Development handles matters concerning the free flow and security of information. This Committee holds discussions about and comments on positions with respect to the issues which are normally developed by the Interagency Task Force on Transborder Data Flows.

Based on my experience as a member of the United States Preparatory Committee and many of its study groups and also as a member of many of the delegations over the past nine years, I believe that the expertise of the United States with the help of these committees has made the U.S. function within the CCITT and CCIR second to no nation and respected by all delegations. This has allowed the United States' position to carry more often than not.

Control Data totally supports the efforts by the Department of State to increase its effectiveness in managing and coordinating international telecommunications and information issues and actively supports and participates in the work of the advisory committees. However, we are aware and concerned that these functions have been established by administrative means rather than statute and are subject to continual substantive change or change in the level of attention given to these most critical issues.

We are also concerned with conflicts within and thus indecision on the part of the government, because of the continued current division of responsibility and authority for these areas among executive departments, agencies and the Federal Communications Commission. In the past this has, at times, resulted in either several United States policy positions or no positions at all.

Quite often this situation of multiple or no United States' position results from a lack of coordination or dialogue between the agencies of the executive branch, other departments and the Federal Communications Commission. We visualize the Commission as an independent agency of the Congress with specific regulatory powers in the areas of domestic and international telecommunications. It establishes rules and regulations pursuant to the Communications Act of 1934 and enforces compliance with such rules and regulations by those subject to its jurisdiction. However, in the area of international telecommunications, the FCC has often moved to fill a void and has established policy. This we feel should be considered as outside the purview of Commission authority. We believe that the establishment of international telecommunications policy is the responsibility of the Congress and the President. It must take into consideration not only the concerns of the Federal Communications Commission but also matters of foreign trade, national security and overall United States foreign policy. We believe that negotiations with foreign nations on matters concerning international telecommunications and information policies are the constitutional responsibility of the executive branch, not the Federal Communications Commission.

S. 999 moves to establish a structure to bring together directly under the Executive Office of the President the franctionated responsibility and authority inherent under the current structure and to more permanently establish this responsibility under statute. We believe that this is absolutely essential if our nation is to develop and maintain comprehensive policies to address these critical issues consistent with the requirements of our total foreign policy.

S. 999 establishes a system of checks and balances through a system of reports to Congress to track the progress of the changes it requires.

We have stated previously that we give total support to the Department of State in its recent actions to discharge its responsibility under current presidential directives with respect to international telecommunications and information issues. We believe strongly that this action in no way conflicts with the structural proposals set forth in S. 999. Rather it supports the concepts of S. 999 by building the nucleus of expertise necessary under the proposed structure.

My comments this morning has been limited to those portions of S. 999 which deal with the structure for international telecommunications and information policymaking. We have prepared a number of detailed comments on other parts of S. 999 which have previously been supplied to the Committee Staff. (These comments do not address the satellite or cable portions of the bill.)

These detailed comments address important issues which S. 999 raises, including: (1) the appropriateness of applying an effective competition test in an international environment; (2) the difficulties raised by the basic/enhanced dichotomy in the international arena; (3) the appropriate role of the FCC; and (4) the absence of designed responsibility for policy implementation, enforcement, and maintenance. We are concerned about the treatment accorded these issues and therefore cannot fully support S. 999 as presently drafted. We hope further discussion will result in modifications of S. 999 which will alleviate these concerns so that we could in all respects support this legislation. In addition, we believe these issues must be discussed and resolved if S. 999 is to meet its stated goals. We will continue to offer our support to your staff.

Thank you, Mr. Chairman, for allowing me to comment on this most important legislation. I will be happy to answer any questions or provide answers in writing to questions which I may be unable to answer at this time.

Senator GOLDWATER. Thank you very much, Mr. Onstad.

Both of you have gotten into a subject that very vitally affects our ability to engage in international trade. Although it has always been this way, we have never felt it until recently because we were in fact the only country in the world with the general ability to engage in much international trade. But now we find the whole world is in that position.

It is really private enterprise against government, and it is a very serious question, because if we abandon our concept of private enterprise to make it easier by that action to engage in international trade and competition, we destroy one of the great freedoms we have, and I do not think anybody wants to do that.

So what does it come down to? Ms. Spero testified to the need of people who understand these problems. Maybe the Congress should create an agency. We have a problem with that. Most of our problems in this country today relevant to business stem back to the idea that Congress has always held that if there is a problem, let us create a new agency; and the dangerous thing is we have never written the rules for that agency to run itself by, nor the requirements for people who work in that agency. So we have a god awful collection of agencies with people who really do not know much about what they are doing.

I say that respectfully because it is a political problem, and I am a member of the organization guilty of this. Recognizing that, I think we have to—and particularly recognizing that our engaging in international activities in communications is something very, very new to the American public, and to some extent new to many members of our communications family—I think we have to proceed with all the advice and help we can get.

Ms. Spero, the figures you used about the number of American Express cards you have floating around kind of shook me up.

Ms. SPERO. And there are probably more since then.

Senator GOLDWATER. I have lost that many.

Ms. SPERO. I hope you had it replaced very quickly, Senator.

Senator GOLDWATER. Ms. Spero, your testimony calls for reorganizing and consolidating internal State Department offices dealing with telecommunications and information. What, in your experience with the State Department, makes this reorganization seem appropriate.

Ms. SPERO. Well, I think the State Department, as you can tell from my testimony, Mr. Chairman, has to play a crucial role in the international telecommunications field. They are responsible, as you know, in international negotiations, bilateral treaties and the like; and I think the State Department needs both the organizational capacity to field those negotiations and formulate that policy, and I think it also needs a career track in the foreign service which makes it desirable to move along that track and which will attract some of the best people in this Department.

One does not like to make general statements, but in my view that is a serious problem right now. I would think by consolidating some of the functions that are now in the Bureau of Economic and Business Affairs, that are now under the Under Secretary of State for Security Affairs, that are now in the International Organization Bureau, one might hope to create a policy group with the expertise and also to create a career track within the foreign service which would be attractive and attract good people, and in addition lead to, as a result, some kind of continuity in personnel.

Senator GOLDWATER. You have pretty well spelled out all our problems.

I recognize that what you suggest is needed. I am not at the moment too thrilled with the idea of the State Department, although I can understand the relationship needed there. I think unless we create by the President a high position that will demand recognition, the State Department is liable to shove this in the basement. But I think you have given us a good answer to that.

Mr. Onstad, you indicated some reluctance in applying an effective competition test internationally. Could you give us some idea of why you have that reluctance?

Mr. ONSTAD. Certainly. We favor competition in international telecommunications, as we have pushed for it in domestic communications and are now seeing evidence of it there.

I think that you have to look at a different test internationally than you do domestically, because on an international circuit, one end of that circuit is a monopoly, the foreign PTT. At the present time, until we see some changes in the attitude of France, Germany, and other European countries, there is always a monopoly at the other end of an international circuit.

At the present time we can get leased lines from four or five U.S. carriers, in that marketplace, and, under common traditional tests that would indicate there is competition, because you have a choice of carriers. But if you really get down to it, those carriers all go to the same place, operate basically the identical service at close to the identical price because of the effect of the cost passed through by the foreign PTT is that really a competitive test?

Hopefully we may see some break in that there will be significant differences in prices going to the same place by all of the different U.S. carriers. Rates also have to be a part of that competi-

tive test before true competition exists in that marketplace. U.S. carrier rates are influenced a great deal by the foreign PTT because of the cost passed on by that monopoly to the U.S. side, which then is passed on to us in the form of prices.

In some cases you will find in the public network services that the foreign cost of the service is two-thirds the total cost. The effect of a 10 percent reduction by the U.S. carrier would not be very substantial.

When we order leased services, which are very, very critical to our business and other U.S. companies, we actually deal with two carriers. We deal with the U.S. side to the midpoint at X price, and then we negotiate with the Belgian PTT or the French PTT for the other side from the midpoint, and sometimes the cost on the other side may be five to six times the cost of the U.S. side.

We have submitted some suggestions and comments and hope to work with the staff on how to develop a test for competition in that marketplace before you deregulate any international service.

Senator GOLDWATER. Of course, in this particular field you are dealing only with communication. I think that would work advantageously to you in developing such a test, because when we look at other areas of international business or competition—take the airlines—where they furnish far better service than we can afford.

Mr. ONSTAD. Yes.

Senator GOLDWATER. Paid for by the government. It is very hard to improve on our service in communications.

Mr. ONSTAD. That is very true.

Senator GOLDWATER. If they do that, we should take a few of them and bring them over here.

Mr. ONSTAD. I think our main concern from a user's viewpoint, Mr. Chairman, is that we have a major effort going on right now, which we support, to attempt to get that competition into the international area. But because of the diametrically opposed attitude on the other side of that international circuit, the attitude of a monopoly that is running a post office, in some cases a bus company, with the revenues of that monopoly, there has been talk or threats if competition is introduced and it is all open and unregulated now, who do we know from the United States that is in the international telecommunication business. The foreign PTT wonders: maybe we should do away with private line services and charge a usage sensitive rate for all of our services on the other—non-United States—half of an international circuit, which would be disastrous from a U.S. user's standpoint.

So those types of things we think must be taken into consideration. What are the effects on other industries of trying to build competition in this international telecommunication industry, and how do we work that out. And that takes an effort, and I think both Mrs. Spero and I have said, foreign policy considerations, trade considerations, regulatory considerations with respect to the Commission must be taken into account in a cohesive effort, not having every agency going off by itself making its decisions in this policy area.

Senator GOLDWATER. Anything you can do to help our staff get something along those lines into language will be beneficial and appreciated, because it is a very difficult subject to spell out.

Mr. ONSTAD. We understand that.

Senator GOLDWATER. This is for both of you. You have both mentioned the problem on restrictions on the free flow of communication across national borders. Do you think there is an appropriate legislative remedy for those problems? Either one of you.

Ms. SPERO. I do not think there is a direct legislative remedy, Mr. Chairman. I think the capacity of the United States to negotiate with foreign carriers, foreign PTT's and foreign suppliers is absolutely crucial.

One Mr. Onstad mentioned right now is the question of leased lines and the future of leased lines, which is vital to his business and vital to my business and the business of many business users.

The policies of foreign PTT's regarding those leased lines is shifting, and it is shifting, we feel, in a direction which will not be favorable to us. I do not think it is possible for Congress to legislate that foreign PTT's have to continue to supply leased lines to us; but I think it is possible for Congress to give negotiating authority to either the State Department or the U.S. Trade Representative to represent U.S. interests.

Senator GOLDWATER. Mr. Onstad, would you care to add anything to that?

Mr. ONSTAD. No. I agree with Joan. We need better government organization. Who's on first? When you go to the administration, who do you go to today? I can reiterate the Japanese problem of Control Data where we went through six agencies, bounced back and forth for 5 years and really did not get any satisfaction, because we as a company certainly do not have the power to negotiate with the Japanese Government. And we did not find anyone in the U.S. Government who felt they had a responsibility or the authority in this area. So we went from one to another to another to another.

Companies of any size can usually hire lawyers and spend hundreds of thousands of dollars and go over and try to negotiate with those foreign companies. But there has been testimony, Mr. Chairman, before various congressional committees on many, many companies who just drop out of the race, the smaller companies, because they just cannot afford that. They cannot afford to move into the international arena, especially in an information arena, because of the enormous cost, which is the result of the pressure on the other side to keep them out of that business.

Ms. SPERO. May I add something to that?

Senator GOLDWATER. Yes.

Ms. SPERO. If one looks at it very frankly, private companies are not only in a difficult negotiating position; they are in a difficult strategic position. We have to live with the foreign PTT's. We have to do business with them all of the time. We want service. We want a new telephone, a new leased line, someone to come and fix the widget. And if we go out on a limb and take a very strong bargaining position in negotiating with a foreign PTT, there are a lot of ways they can get back at us in other areas of our business.

Mr. ONSTAD. [Nods affirmatively.]

Ms. SPERO. It makes it very difficult for us, and it makes many companies not only reluctant to spend the money if they have the money but to get out in front.

Senator GOLDWATER. I could not agree with you more. It is very much against our nature to retaliate.

Mr. ONSTAD. May I add to that? Many times to you when you are talking to a foreign PTT—or now the foreign data protection agencies—they will say what is the U.S. position on this; and you almost have to say do you want the position of the Commission, the position of USTR, the position of Commerce, or the position of State, because there is no U.S. position.

Senator GOLDWATER. Well, this is a problem that you can add greatly to the solution of by helping us write legislation that might even be a forerunner of making some sense out of the problems that American businessmen have with finding out who to go to.

I have been talking to people here who make the only electric typewriters we make in the United States. Now, we invented the damned things, but they are all being made in Japan. They do not know who to go to to find even a little satisfaction of talking.

This field, to me—I am prejudiced—but I think this is probably one of the most important fields we are engaged in. And because the international aspects of it in the general areas we are talking of—land lines and not air—we have not been in this aspect. And I think it is very essential to the whole future of the world that we make international communications something that we do not worry about who you see or who you bow to. It is making it possible for anyone of us to pick up a little gadget and talk to anyone else in this world cheaply and quickly. So we look to you people to help in that.

I want to thank you for being here. Your testimony has been most interesting. I could sit here and pursue this all day long, but I know you have things to do, and we are trying to write a budget act that is a disaster. So I think I would be better off if I stayed here, but I cannot.

So thank you very much, and the meeting will stand adjourned.

[Whereupon, at 11:30 a.m., the subcommittee was recessed, subject to the call of the Chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

CONTROL DATA CORP. TECHNICAL COMMENTS

I. GENERAL COMMENTS

S. 999 recognizes the importance to the United States of international telecommunications and information services, and the current inability of the United States government to plan for, formulate, implement, or enforce coherent or consistent policy in the areas of international telecommunications and information. Accordingly, S. 999 is an important step forward. It is significant that the Senate, which has never before introduced a bill specifically addressed to the important issues in these areas, has now done so.

The problems which S. 999 addresses are complex, and not capable of easy resolution. The drafters of this bill have made serious and constructive efforts to deal with these issues. It is, however, necessary to point out that there are unresolved important issues underlying S. 999, and that there should be additional discussion of them, designed to reach appropriate resolution of them.

The important and complex issues underlying S. 999 which deserves further attention are discussed below:

(A) In its Computer Inquiry II decision [1] the Federal Communications Commission (FCC) held that basic telecommunications services [2] were subject to its Title II common carrier jurisdiction and that enhanced services [3] were not telecommunications services, and accordingly not subject to its Title II jurisdiction. The reach of this determination was expanded on reconsideration, where the Commission held that the basic/enhanced dichotomy would be applied internationally.[4] Last August, the Commission's determination to apply the basic/enhanced dichotomy internationally was affirmed in the GTE/Telenet decision,[5] with respect to which petitions for reconsideration and for stay are now pending at the Commission.

As those petitions recognize, while the United States may base its regulatory policy and resulting regulatory requirements on a distinction between enhanced and basic services, the rest of the world does not. Other nations recognize only one category of services, telecommunications services,[6] and those services comprehend much of what in the United States would be considered enhanced services. The problems presented by this discontinuity are myriad, and have been exhaustively detailed in the pending petitions for reconsideration.

For purposes of S. 999, however, it is important to note that the bill is drafted in a manner more (although not totally) consistent with the internationally accepted definition of telecommunications. Thus S. 999 begs the question of whether it is intended to comprehend and apply to all telecommunications services which would be included in the internationally accepted definition, or only those services as would be considered basic under the Computer Inquiry II decision. This approach, which

---

[1] In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer Inquiry II), 77 F.C.C. 2d 384 (1980) (Final Decision).

[2] Basic services are services that are not enhanced. In offering a basic transmission service, "a carrier essentially offers a pure transmission capability over a communication path that is virtually transparent in terms of its interaction with customer supplied information." Final Decision, 77 F.C.C. 2d 384, 420 (1980).

[3] Enhanced services are "services offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information." 47 C.F.R. § 64.702(a).

[4] Computer Inquiry II, 84 F.C.C. 2d 50, 53 n.4 (1980) (Reconsideration).

[5] Memorandum Opinion and Order in the Matter of GTE Telenet Communications Corp. and Tymnet, Inc., F.C.C. 82-377, released August 25, 1982 (Order).

[6] The International Telecommunications Union Convention (ITU Convention) defines telecommunications as: "Any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems." 28 U.S.T. 2495, 2644, TIAS 8572.

has the merit of bringing the United States into compliance with international practice, nonetheless presents serious practical and regulatory difficulties, since it is inconsistent with the FCC's requirements and leaves open the question of how services considered telecommunications under the international, but not United States rules, are to be treated. Accordingly, further discussion and review of this important area is required.

(B) S. 999 is premised on the view that to the maximum extent possible, the FCC should deregulate international telecommunications services where there is "effective competition." The "effective competition" test, familiar from recent proposed domestic telecommunications legislation, presents, however, some difficulties when transposed to the international environment. Because international telecommunications services can only be provided by United States carriers and entities in conjunction with a foreign administration, Ministry of Posts and Telegraphs, or foreign government owned or controlled monopoly entity, the United States does not and can not have complete control over such services. The terms, prices, condition, method of provision and other aspects of service from the theoretical midpoint of an international telecommunications service are controlled by a foreign country. In most foreign countries virtually all service is provided by a monopoly government entity or government owned or controlled carrier. In such circumstances, the monopoly foreign service providing entity has the ability to manipulate, control, or "whipsaw" the U.S. entity providing the U.S. half of the international telecommunications service. While there may be multiple U.S. entities providing such service, there is not, therefore, true competition between them since the service terms, conditions and prices offered by these U.S. entities are, in major respects, set by the foreign service provider. In ordinary circumstances, where there are six competitors in a market (that is, six U.S. carriers), it might be assumed that there was competition. In these circumstances, however, this assumption is not correct. The existence of several competitors does not indicate that there is competition, because the rates, terms and conditions of service are in practical effect controlled by the foreign monopoly service provider. Accordingly, whether an "effective competition" test can be used with respect to international telecommunications services is not free from doubt, and deserves further review.

(C) The role of the various U.S. departments and agencies which have authority and responsibility for international telecommunications is addressed by S. 999, but areas of possible continued overlap and confusion remain. For example, the Federal Communications Commission remains in a position to be judge, jury and prosecutor with respect to the institution, continuation or discontinuation of international telecommunications services. Further, S. 999 focuses only on the formulation and review of international telecommunications policy, but does not provide who is to, or how there is to be, implementation and enforcement of such policy. Further, there remains overlap between the functions of the Department of State, the Department of Commerce and the Federal Communications Commission. This overlap has the potential to undermine the centralization and coordination of authority and responsibility which S. 999 seeks to enhance. Finally, and very importantly, it must be made clear that negotiations with respect to international telecommunications and information policy matters must not be conducted by the Federal Communications Commission. The bill must explicitly state what entity has responsibility and authority to conduct these negotiations, and must delimit the role of the FCC in such proceedings.

(D) The existing facilities planning process has worked well. S. 999 must be reviewed with the goal of enhancing this process, not detracting from it. In this regard, it is important to recognize that not every type of group interested in the ultimate results of that planning process needs to participate in it, as long as there is a significant diversity of interests represented in the planning process. If there is such diversity, the likelihood that selection of the appropriate international facility (for example, cable, fiber optics, satellite) and the appropriate capacity for such facilities, will occur.

II. TECHNICAL COMMENTS ON S. 999 [7]

Findings

Section 2(1) should be revised to make clear that it is rapid advances in information technology as well as international telecommunications technology that makes

[7] References to S. 999 are to the printed version of the bill introduced in the Senate on April 7, 1983. S. 999, 98th Cong., 1st Sess., *Cong. Rec.*, S4274–69 (daily ed. April 7, 1983).

possible a greater demand for international telecommunications services, and that it is this increase in demand that is responsible for competition among providers of such services. The section must make clear that it is the combination of the two technologies, as well as the ability of international telecommunications services to be attached at either the receiving or transmitting end to complex information technology, which has brought about changes in demand.

Section 2(2) should be revised to make clear that it comprehends two different ideas: (1) that the marketplace is a better regulator than government, and (2) that marketplace competition brings about greater diversity in services. It is not competition as a regulator, as the section as now drafted implies, that creates diversity.

Section 2(3) notes that it is essential "to encourage the entry of new carriers in the offering of international telecommunications services and facilities." This statement should be revised to note that it is entry of new entities, whether or not carriers, that is essential. This change would take into account the problems created by the enhanced/basic dichotomy pursuant to which non-carrier entities could enter the market. The word "facilities" should be eliminated from the section to remove the unintended apparent suggestion that competition to existing international systems such as INTELSAT, is the policy of the United States. This change would also eliminate the possibility that the section could be read as having prejudged the ORION/INTELSAT matter.

TITLE VI—INTERNATIONAL TELECOMMUNICATIONS

Definitions

Section 601 repeatedly refers to "transmission" from or to any place in the United States. The term "transmission" is not defined, and the absence of a definition creates the implication that it is to be defined differently from the word "telecommunications."

Section 601(2) in defining "information service" refers to the "offering of a capability [to manipulate information] which may be conveyed via telecommunications. . . ." What is meant by "offering," that is, whether the "offering" must be for profit, as part of another service, independently, or otherwise is not clear. Further, the capability "for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information which may be conveyed via telecommunications. . . ." contains an ambiguity in the phrase "may be conveyed." The reference to "may be" does not indicate whether this phrase is intended to refer to the permissibility or capability of conveying information via telecommunications. As drafted, the section is so broad that it could include a person or business leasing simple audio tape recorders to customers.

Section 601(3) defines "regulated telecommunications service", but does so in a manner which ignores the basic/enhanced dichotomy and leaves it unclear as to how what are deemed enhanced services under Computer Inquiry II are to be treated. The only command is that the FCC regulate international telecommunications service or facilities (with telecommunications defined more like the ITU rather than the FCC definition) "not subject to effective competition." Further, there is an implication that the section endorses the notion of "flash cut" deregulation, so that there could be a category of international telecommunications services which are both "not subject to effective competition" and not regulated, thus falling into a regulatory never-never land. Lastly, the term "regulated telecommunications services" appears (at line 1, page 4) to comprehend facilities. Any reference to "facilities" in a definition of "service" should be eliminated, because services are provided over facilities but are not, in and of themselves, facilities.

Section 601(4) defines "resale", but does so in a manner which is not wholly consistent with the FCC's existing definition.[8] The basis for the inconsistency is not apparent.

Section 601(5) defines "shared use", and similiary, does so in a manner whch is not wholly consistent with the FCC's existing definition.[9] The basis for the inconsistency is not apparent.

Section 601(6) presents three problems. (1) it uses the word information, which is never defined in the bill. (2) It implies that fibre optics is part of the electromagnetic spectrum, although there is significant dispute as to this point. Fibre optics should explicitly be added to the section to eliminate any possible confusion. (3) The

---

[8] *Resale and Shared Use of Common Carrier Services*, 60 F.C.C. 2d 261 (1976), *reconsideration*, 62 F.C.C 2d 588 (1977), *affirmed*, *AT&T v. FCC*, 527 F.2d 17 (2nd Cir.), *cert. denied*, 439 U.S. 875 (1978).

[9] *Id.*

definition of "telecommunications" implies a basic "pipeline" service, one in which any change in the form or content of the information must be made prior to or after the transmission. The definition is therefore more limited than the definition of "telecommunications" contained in Annex 2 of the 1973 International Telecommunications Union Convention (ITU Convention), a treaty ratified by the United States. 28 UST 2495, TIAS No. 8572. The ITU Convention defines telecommunications as: "Any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems."

Section 601(7) defines "international telecommunications carrier" as "any person, including any government or independent government entity, which offers any international telecommunications service for hire." The phrase "to the public" should be added after the word "offers" to make clear that intra-corporate use of an international telecommunications services would not render the user a "carrier." In addition, it should be made clear that the shared use of telecommunications equipment facilities or services, which does not render the government a carrier, would not render private entities engaged in sharing a "carrier."

Section 601(8) presents the same problems with respect to the word "information" and the use of fibre optics as Section 601(6). Further, while the section excludes "customer premises equipment" from the definition of "transmission facilities" customer premises equipment is not defined.

Statement of policy

The policy statement outlines a United States government policy designed to encourage the development of marketplace competition in international telecommunications and creates a basic presumption in favor of such competition. It recognizes the need to consult with foreign telecommunications entities. It is also designed to promote both the deregulation of resale and shared use and the interconnection of international telecommunications facilities on a cost of service basis.

The statement makes no reference to the treaty obligations of the United States contained in the ITU Convention and the 1973 Geneva Telegraph and Telephone Regulations (ITU Regulations). Neither the ITU Convention nor the ITU Regulations explicitly bar achievement of the goals contained in the Act's policy statement. See, e.g., ITU Telephone Regulations, arts. 4, 5 and 7, 28 U.S.T. 3296 at 3358, 3359, 3360; TIAS No. 8586. These goals do conflict, however, with the current "Recommendations" of the International Telegraph and Telephone Consultative Committee (CCITT Recommendations). These Recommendations do not have the force of international treaties but the United States has subscribed to them.

Section 602(a). The following are suggested in connection with this section: (1) It should be made clear that U.S. policy is to rely on competition and the private sector with regard to the provision of international telecommunications equipment as well as services; (2) that if the Computer Inquiry II dichotomy is upheld, the section would have to note that entry of new entities (not just new carriers) to the international marketplace should be encouraged; (3) that marketplace competition will result in the availability of a wider variety of telecommunications services as well as technologies; (4) it is necessary (see line 17, page 6) for the Commission to "deem" or "determine" that an international service or facility is not subject to "effective competition," so that there could be no categories of service which are both not subject to effective competition and not subject to regulation, and therefore in a regulatory limbo.

In addition, the section rests on the notion of "effective competition", a test which, as discussed in Section I, may not be wholly applicable in the international sphere. It is for this reason that the last sentence of Section 602(a) presents serious problems, in that the environment in which international telecommunications services are offered does present "basic . . . operational, or economic factors" which "would necessarily preclude the provision of any international telecommunications service under conditions of competition." Thus there is considerable doubt as to whether the presumption found in this last sentence to the contrary is appropriate.

Section 602(b) provides that "[t]he Congress recognized that the provision of international telecommunications services, and the planning, construction, and ownership of international telecommunications facilities are necessarily joint undertakings between United States persons and representatives of numerous foreign nations." In this quoted passage, the words "operation" or "use" should be inserted after the word "construction", and the word "numerous" should be deleted. Further, while the last sentence of Section 602(b) recognizes that "interests of . . . sovereign nations are to be considered in the implementation of United States policy," neither this or any other section of the bill makes clear who has the authority and the re-

sponsibility to consider such foreign interests, or who has authority or responsibility for such implementation.

Section 602(c) notes that it shall be the policy of the United States to promote, through meetings with foreign telecommunications entities, deregulation of resale and shared use of international telecommunications service. This section does not, however, make clear who has the responsibility and authority to carry on such negotiations through meetings with foreign entities, meetings, nor does any other section of the bill.

Section 602(d) notes that it "shall be the policy of the United States to promote the interconnection of international telecommunications facilities based upon the cost of providing such facilities." This wording may contain an unintended confusion, blending the notion of cost of providing international telecommunications facilities with the separate, independent, and different costs of providing interconnection to these facilities. In addition, it should be explicitly stated that it is United States policy to promote free and open interconnection of all facilities and services, not just to promote cost-based interconnection.

Authority of the Commission

Section 603(a) grants the Commission authority to forbear from regulation, and directs it to "revise, reduce, or eliminate any rule or regulation . . . . " By blending both authority for forbearance and a directive to eliminate regulation, the bill may create conflicting and inconsistent goals for the Commission. While there has been questions as to whether the FCC has the authority to forbear from regulation, it has been clear that it has authority to eliminate unneeded regulation. The drafting of Section 603(a) could be interpreted to require the Commission in all circumstances to eliminate regulation rather than forbear. Were the Commission required to do so, much needed flexibility to tailor its responses to the circumstances presented would be lost.

Moreover, the Commission is given broad authority to change existing rules except that the Commission may not revise, reduce or eliminate any rule or regulation where such action "may result in a significant adverse impact" on national defense or "upon the economic competitiveness and viability of United States suppliers of telecommunications equipment and international telecommunications services relative to competing foreign suppliers and their United States affiliates." (Emphasis added.)

This section is drafted in a way designed to provide some limit on Commission's ability to deregulate or otherwise change existing rules. It does not appear to bar the Commission from adopting new rules that may have "a significant adverse impact" on equipment or service suppliers. Moreover, the section would apparently limit the Commission's authority only if equipment or service suppliers as a group were harmed. Harm to one or more members of such a group would not, by itself, even if extreme, constitute a significant adverse impact.

In the event that the direction to revise, reduce, or eliminate unnecessary regulation remains, the words "or policy" should be added after "any rule or regulation" (line 18, page 7). The word "regulated" should be inserted before the word "carrier" (line 21, page 7) to make clear that the directive applies to providers of basic not enhanced services.

Finally, the section should make clear that forbearance or regulatory elimination should not occur if such actions have an adverse affect on (1) users of international telecommunications services, (2) information services, (which as a practical matter are dependent on international telecommunications services), and (3) that any deregulatory action with respect to telecommunications services can not be taken if it would reduce competition with respect to information services.

Section 603(b) provides: "The Commission shall have continuing authority over the provision of regulated international telecommunications services." This section does not define the type of regulatory authority the Commission may exercise. It is unclear whether regulation refers to traditional common carrier regulation under Title II of the 1934 Act (certificate of service regulation) or whether the Commission may adopt other types of regulatory schemes. As drafted, this section and other sections discussing regulation (e.g. Section 604) may (but do not clearly) give the Commission broad latitude in defining the degree of regulation. But see Section 605 and Section 609 discussed infra.

Section 603(b) would not be necessary if only a forbearance approach were used in Section 603(a). If it is not, the word "regulated" might be deleted from line 6, page 8, to take into account the basic/enhanced dichotomy.

Classification of services

Section 604 gives the Commission authority to choose to regulate or deregulate international telecommunications services or facilities (excluding CPE—see Section 601(8). Regulation may only occur where the services or facilities are currently regulated (as of the date of enactment) or where, after a hearing, the Commission finds (1) the services of facilities are not subject to effective competition. (2) regulation is required to accomplish the purposes of the title, and (3) the benefits of regulation outweigh the costs. Section 604(b)(2) also provides a list of factors the Commission must consider.

In order to meet the requirements of this section, it is clear that the Commission will need to expand its capability to report on and analyze the international market for telecommunications services and facilities. This section would place greater demands on the Commission, which has recently been criticized for failing to do what this section would explicitly require. See Report by the Comptroller General, FCC Needs to Monitor a Changing International Telecommunications Market (B-210512, GAO/RCED-83-92, March 14, 1983).

In addition, the section is premised on application to the international environment of an "effective competition" test, which as noted in Section I, may not be appropriate.

Section 604(a) does not make clear whether among those services the Commission shall identify and classify within 30 days of enactment are enhanced services, or only those basic services now regulated under FCC Title II jurisdiction.

Section 604(b)(1) should not contain references to facilities. In addition, it should be made clear what type of hearing is to be held by the FCC for purposes of classification and reclassification of international service, that is, a formal or informal hearing, on the record or not, and what the evidentiary test must be.

Section 604(b)(2) requires several clarifications.

In sub-section 604(b)(2)(A) the term "unaffiliated" providers should be defined, so that it is clear whether these providers must be unaffiliated one with the other, with a foreign service provider, or with any other entity. In subsection 604(b)(2)(B), the type of market referred to in line 5, page 9 should be defined as either a service or a product market.

In sub-section 604(b)(2(C) the question arises as to whether even "unaffiliated providers" of services and facilities can provide service at anything other than virtually the same rates, terms and conditions, because these factors are substantially controlled by the foreign entity with which a U.S. international telecommunications service provide deals to furnish services, as discussed above.

Subsection 604(b)(2)(D) should be revised to eliminate reference to "facilities," and to include national defense and emergency preparedness as conditions relevant to determination of how an international telecommunications service should be classified.

Subsection 604(b)(2)(E) should be revised to indicate that it is the extent to which United States entities or carriers are accorded not fair access, but equal interconnection, in foreign markets that is relevant. As drafted, Section 604(b)(2)(E) uses the term "fair access" without defining the term. The phrase may imply some sort of "most favored nation" treatment or it may be purely subjective. In addition, the section is written in terms of "carriers," leaving unresolved what effect the treatment of enhanced service providers is to have on the competitive determination the Commission must make.

Subsection 604(b)(2)(F) is too vague. It states only that the Commission, in making a determination as to how to classify an international telecommunications service may take into account "other indicators of the extent of competition." Some illustrative examples would be useful in providing the Commission guidance in this respect. For this reason, it is suggested that the subsection be revised to indicate that other indicators, "such as the free access of users of international telecommunications services to international markets," be considered.

Transitional provisions of certain services

Section 605(a) does not make clear whether the international telecommunications services "being provided under tariff on the date of enactment of this title" which must continue to be provided under tariff for one year are to include enhanced services offered internationally. At present, enhanced service providers have not unbundled their offerings of such services from basic services, pursuant to a Commission directive. Were the bill to be enacted, the appropriate treatment of these services would be open to great doubt.

Section 605(b) should make explicit what kind of a hearing must be held by the FCC, how quickly it must be held, and under what circumstances, if a service is to continue to be regulated.

Section 605(c)(1) should be revised to make clear that it is not the failure of the Commission to make a determination as required in Section 604(b) (that is, the absence of FCC action) that results in deregulation of an international telecommunications service, but rather the failure of the Commission to make a determination that the service meets the criteria set forth in Section 604(b). Otherwise, the failure of the Commission to act, in the event that it had inadequate staff or for other reasons, would be sufficient for deregulation of a service that did not meet Section 604(b) criteria.

Section 605(c)(2) does not make clear how the Commission is to classify new services which come into existence after enactment. Whether new services are to be classified at their inception, or only once every two years when the Commission engages in its reclassification process, is not specified.

Interconnection

Section 606(a) is written in terms of "every international telecommunications carrier. . . ." whether a U.S. carrier or not. Perhaps the implication that this requirement is to be extended extraterritorially is intended.

Section 606(a)(1) provides interconnection requirements which apply only to regulated services, not to unregulated services. For full interconnection, it should be made clear that the interconnection obligations of the bill apply whether or not the service is regulated or unregulated. This approach would eliminate the possibility that, for example, unregulated service providers affiliated with carriers, could fail to interconnect or would discriminate with respect to interconnection. It would also bring within the requirements of the section enhanced services. As now drafted, the provisions may also not be consistent Computer Inquiry II.

Section 606(b)(1) indicates that any carrier, whether a U.S. entity or not, must be "treated" as a separate domestic carrier and a separate international carrier for purposes of interconnection requirements, but the degree of separation required for such treatment is not specified. In addition to the question raised by the implication that these provisions will be applied extraterritorially, there is need for two further revisions: (1) The section now focuses on separate treatment of domestic and international communications services. It must also focus on separate treatment of international telecommunications services and international information services. It must be made clear that an entity providing both international telecommunications services and international information services must keep these offerings separate, so that foreign administrations (or others) cannot discriminate in favor of an international information services component of an entity providing both international telecommunications and information services. For example, it should not be possible for a foreign administration to say that it would permit interconnection only with the international information services component of international carrier X, not with an independent international information services provider. Such restrictions would seriously undercut the pro-competitive and the open interconnection goals of this bill. (2) The subsection states only that the foreign and domestic components of company be "treated" as separate, but does not require a separate corporate form, or any other indicia of separation. Absent real separation, the possibility for cross-subsidization, discrimination and other improprieties is of course, great.

Section 606(c) provides penalties for failure to interconnect. It is not clear whether there is a private right of action under this section.

Carrier contracts

Section 607(a) should be revised to make clear that contracts, agreements, or arrangements in effect prior to the date of enactment can be vacated or modified by the Commission. It is also unclear whether arrangements between United States enhanced service providers are or are not comprehended by the requirements of this section.

International telecommunications facilities

Section 607(b) does not make clear whether the section is to apply to enhanced services, since it refers only to regulated services.

Section 608 deals with international telecommunications facilities. The section is written in terms of "carriers" and "carrier proposals," but it should be made clear that entities other than carriers can engage in facilities planning and make facilities planning proposals. Accordingly, the phrase "or entities" should be added at line 12, page 13 after the word "carriers;" the word "carriers" should be striken on

line 14, page 13 and the word "entities" should replace the word "carriers" on lines 15 and 16, page 13.

Section 608(b) seeks to enable the Commission or Commissioners to meet with representatives of foreign telecommunications entities to exchange information. The phrasing of the section does not make clear whether the requirements of the section apply to staff as well as the Commission acting as a collegial body or to any individual Commissioner. Further, the section should explicitly state that data obtained by the Commission, any commissioner or its staff at any international meeting must be made available to the public. Finally, the section appears to conflict with the Government in the Sunshine Act, section 2, Pub. L. No. 94-409, 90 Stat. 1241, 5 U.S.C section 552b (1976), which mandate open meetings subject to ten narrowly defined exemptions, and with the recent D.C. Circuit Court of Appeals decision which dealt with prior Commission conduct of such meetings. ITT World Communications, Inc. v. FCC, Civ. No. 80-0428 (D.C. Cir. Feb. 1, 1983).

Section 608(c) may present unintended difficulties with respect to the Webb-Pomerene Export Trade Act, section 2, 15 U.S.C. section 61 et seq.

Applicability of title

Section 609 provides that the "provisions of this title shall be applicable only to international telecommunications services" but the title includes many references to facilities. The purport of section is similarly unclear.

TITLE II—INTERNATIONAL TELECOMMUNICATIONS

Findings and purpose

Section 202(a)(3) notes that Congress finds there is conflicting and confusing responsibility and authority to develop U.S. telecommunications and information policies between different federal agencies. But the section does not deal with an important issue, that is, who has central and primary responsibility or authority for enforcement or implementation of policy.

Section 202(a)(4) should be revised to insert the word "international" before the word "telecommunications" on line 2, page 16. The section should specify what constitutes the "mechanism" which is to coordinate policy development within the federal government, not merely indicate there is to be a mechanism.

Section 202(b)(1) should be revised to indicate that it is a technologically competitive information industry as well as a technologically competitive telecommunications industry that Congress seeks to "maintain and promote."

Section 202(d)(2) does not make clear what competition the bill seeks to enhance, that is, whether it is internal U.S. competition, between the U.S. providers of international telecommunications services, or external competition, which would involve promoting competition with respect to foreign governments and other entities. Further, the word "international" should be inserted before the word "telecommunications" on line 12, page 16, and the word "goods" should be replaced in that line by the word "products".

Section 202(b)(5) should be rewritten so that at line 22, page 16 the word "goods" is replaced by the word "products" or "facilities".

Section 203 creates the Office of the Special Representative for Telecommunications and Information (Office). The language establishing this Office is similar to the language that established the Office of the U.S. Trade Representative. See 19 U.S.C. § 2171.

In a number of respects the new Office will not have the same degree of authority and responsibility currently entrusted to the USTR. For example, the USTR reports directly to the President and the Congress and is responsible for administering the trade agreements program. 19 U.S.C. § 2171(c)(1)(B). The new Office, on the other hand, merely "advises" the President and Congress and "coordinates" executive branch international telecommunications and information policies § 203(b)(3)(B). Further, Reorganization Plan No. 3 of 1979 (44 F.R. 69173, 93 Stat. 1381) and Executive Order No. 12188 (Jan. 2, 1989, 45 F.R. 989) both give the USTR duties and responsibilities not entrusted to the new Office. See, e.g., Reorganization Plan, § 1(b)(1) (USTR "shall have the primary responsibility . . . for developing, and for coordinating the implementation of United States international trade policy. . . ."); Reorganization Plan, § 1(B)(2) (USTR "shall have lead responsibility for the conduct of international trade negotiations. . . ."). The other subsections of Section 204 generally track the language of 19 U.S.C. §§ 2171(d)-(f).

The references in Section 203 to "federal agency" (found in other sections of the bill as well) should be clarified to indicate whether that term is co-extensive with the term "agency" in the Administrative Procedure Act, 5 U.S.C. §§ 151 et seq.

Section 203(a)(3)(A) should be revised to make clear that the Special Representative for Telecommunications and Information is the principal, not the chief, representative of the U.S. and international telecommunications and information conferences, and to make clear that the Special Representative is the only U.S. representative to act in this connection. As now drafted, the section also requires the Special Representative to go to all international meetings, which may be too great a burden.

Sub-section 203(a)(3)(B) gives the Special Representative the authority to advise the President and Congress, and to coordinate "executive branch development" of policy, but no authority to implement and enforce such policy.

Sub-section 203(a)(3)(E) uses a catch-all phrase to permit the Special Representative to perform other "functions as the President may direct." It might be wise to limit this catch-all phrase to such "other functions in the area of telecommunications and information policy as the President may direct."

Section 203(c) refers to the ability of the Special Representative to utilize "with their consent the services, personnel and facilities of other Federal agencies" but does not make clear whether this directive is to encompass both executive branch and independent agencies, or what happens if there is no consent.

Section 203(d) does not make clear what is meant by the Special Representative's authority to "draw upon the resources" of various departments and "consult with Federal agencies." These ambiguities may lead to the very conflicts and inconsistencies which the bill is designed to prevent. In addition, the reference to the International Communications Agency should be to the United States Information Agency.

Establishment of the task force

Section 204(a) established a Task Force which "shall be the principal coordinating body for the development of U.S. telecommunications and information policies." This directive does not give the Task Force real responsibility or authority, and is limited to policy development, not implementation or enforcement.

Section 204(b)(1) should include the Office of Management and Budget and the Department of Defense in the Task Force. The reference to the International Communications Agency should be to the United States Information Agency.

Section 204(f) provides that if the President does not continue the Task Force, he may assign its responsibilities to one department or agency. The absence of a designated agency or department may lead to confusion. It might be better to provide that Task Force functions can be delegated to the Special Representative or make a selection of the delegatee.

Powers of the task force

Section 205(a) delineates the powers of the Tast Force, but limits them to development of U.S. policy, and as noted above, there is no provision for policy implementation or enforcement. In addition, the Task Force is given the authority in sub-section 205(a)(2) to review all "significant" policy determinations of Federal agencies. In addition to creating a difficulty with respect to defining what is or is not a "significant" policy determination, the sub-section does not indicate whether it is existing policies on the date of enactment, policies in effect prior to the date of enactment, or only new policies which the task force can review. Further, Section 205(a)(2) deals only with policy statements. It does not appear to provide the Task Force with any control over contracts, meetings and decisions that do not rise to the level of policy statements.

Section 205(a) gives the Task Force authority to make recommendations to Federal agencies, but does not provide what force or affect the recommendations should have, or to which agencies it may do so.

Another problem may arise from conflicts between Section 205(b) (which allows the FCC to engage in rulemaking and adjudicating) and Section 203(c)(3) of Title I (which gives the new Office power to "promulgate such rules and regulations as may be necessary to carry out the functions vested in the Office"). If Section 203(c)(3) is meant to give the Office rulemaking and adjudicatory authority as provided for in the Administrative Procedure Act, there could be instances where the Office and the FCC would be involved in conflicing rulemaking or adjudicatory proceeding.

TRANSFER OF FUNCTIONS

Section 206 transfers some, but not all, of the functions of the Secretary of State, the Secretary of Commerce, and the ICA (U.S.I.A) relating to international telecommunications and information.

Section 206(a) transfers many of the functions of the Department of State, vested in the Secretary of State by Executive Order No. 12046, to the new Office. The transfer would remove the Secretary's "primary authority for the conduct of foreign policy" with respect to telecommunications and give that authority to the Office. The grant of this "primary authority" to the Office may conflict with the authority of the Task Force to act as the "principal coordinating body for the development of United States telecommunications and information policies." See Section 204(a) of Title II.

Section 206(b) would transfer the Secretary of Commerce's authority to coordinate planning for international telecommunications conferences and negotiations to the new Office. The Secretary of Commerce would retain, however, significant authority in the areas of research and development and would remain "the President's principal adviser on telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry." Exec. Order No. 12046, section 2-401. The substantial authority retained by the Secretary of Commerce suggests that possible conflicts may arise between the Department of Commerce and the new Office.

Section 206(c) apparently transfers U.S.I.A.'s authority to advise the President on international informational, educational and cultural matters to the Task Force. Because the Task Force is the principal coordinating authority only for telecommunications and information policies, it is unclear why it should also be given advisory authority over educational and cultural matters, as long as these matters do not relate to telecommunications or information policy. If this is not the intent of the Act, Section 206(c) might be clarified to reflect a more limited transfer of authority. (This may be the intent of Section 302 of Title II. See discussion infra.)

ADMINISTRATIVE POWERS

Section 207(b) provides that the Secretary of Commerce and the Secretary of State shall designate such employees "as are necessary" to service staff of the task force. Who decides what employees are necessary, and how necessity is to be determined, of course, not clear.

Advisory committee

Section 208(d) indicates that the Task Force must consult the Advisory Committee before approving any statement of "new U.S. policy relating to international telecommunications and information," but does not indicate whether the Task Force may—or must—consult the Advisory Committee with respect to "old" policy, that is, policy in effect prior to date of enactment.

Section 208(e) indicates that the Task Force shall make available to the Advisory Committee such resources "as may be reasonably required" to carry out its activities. Who decides what is "reasonably required" or how is not clear.

Transition of Commission authority

Section 301 deals with the transitional authority of the Commission, but does not make clear how in this transitional period enhanced services are to be treated.

International economic competition

Section 303 authorizes the Secretary of Commerce to collect information on competitive conditions. The section bears the seeds of the same divisiveness of responsibility as is presently in existence, and accordingly, it is suggested that the section be revised to indicate that, only at the request or direction of the Special Representative, the Secretary of Commerce is authorized to collect information. In this respect, the resources of the Department of Commerce could be used, but the policy direction for how and when to use them would come from one source, the Special Representative, who is charged with responsibility for policy.

Assistant Secretary of State

Section 306(a) establishes an Assistant Secretary of State for Telecommunications Affairs. The relationship between this Assistant Secretary and the Special Representative is far from clear, and may only exacerbate the existing conflicts between the State Department and other departments and agencies with responsibilities for international telecommunications matters. The functions of the Assistant Secretary are to include "formulation and implementation of policy regarding foreign economic matters in the area of telecommunications, and advising the Secretary of State with respect thereto." This is one of two mentions of policy implementation in the bill, but implementation responsibility is limited to "foreign economic matters." How the Assistant Secretary's responsibilities with respect to formulation and im-

plementation of policy regarding foreign economic matters is to conform with those of the Task Force is also not clear.

National defense and emergency preparedness

Section 707(c) has been accomplished by the establishment of the President's National Security Telecommunications Advisory Committee (NSTAC).

STATEMENT OF INTERNATIONAL BUSINESS MACHINES CORP. (IBM)

IBM applauds the sponsors of S. 999 for following through on the initiative established last year to develop international telecommunications legislation that recognizes the rapidly changing environment in telecommunications technology and the burgeoning opportunities for a dynamic marketplace in international telecommunications.[1]

United States international telecommunications policy is an issue of vital importance to this nation and to the world. Not only is the telecommunications sector one of the fastest growing sectors of the United States and world economies, but international telecommunications services provide key support for a broad range of extremely important commercial and government activities. International telecommunications legislation thus has a major impact on, and is of keen interest to, both suppliers and consumers.

The basic goal of United States international telecommunications policy, as enunciated in the Communications Act of 1934 and the communications Satellite Act of 1962, is to provide a wide range of reliable telecommunications services to all the people of the United States at reasonable charges.

Like the sponsors of S. 999, IBM believes that this goal can best be achieved by proscribing regulation of information services, by encouraging competition among United States carriers in the offering of international telecommunications services, by deregulating those services that are subject to effective competition, and by establishing a mechansim for improved coordination of United States policy development, with continuing recognition that the legitimate interests of other nations must be kept in mind in the implementation of that policy. We are pleased that the language of S. 999 reflects these approaches.

TITLE I

The policy statement in section 602 gives statutory endorsement to the FCC's recognition, beginning in the late 1960s, that its statutory mandate under the Communications Act of 1934 would best be fulfilled by allowing competition in United States telecommunications. At the same time, it acknowledges that international services and facilities are joint undertakings between the United States and numerous other nations, and that the legitimate interests of those nations must be considered in the implementation of United States policy to the extent those interests may be affected.

During the past few years, the FCC has come to recognize that regulation, both domestic and international, is unnecessary for services in which a carrier lacks significant market power, and is starting to relax regulatory constraints. IBM does not doubt the FCC's authority to eliminate unnecessary regulation in the United States international arena. There are those, however, who question this authority. We therefore endorse the explicit direction given to the FCC in section 603 to forbear from unnecessary regulation. We also endorse the establishment of statutory guidelines, as in section 604, to determine when a telecommunications service is subject to effective competition, and the mandate to the FCC in section 605 to deregulate services subject to effective competition.

While IBM fully agrees with the pro-competitive, deregulatory objectives of S. 999, we believe that some amplification or clarification, in legislative or report language, would help to ensure that these competitive objectives can be successfully achieved. Our concerns fall in the areas of information services, transmission capacity, resale/share use, and safeguards.

Information services

In the Second Computer Inquiry, the FCC properly limited regulation to basic transmission services. It decided to rely on the competitive marketplace, rather

---

[1] Our references to international telecommunications services and facilities apply solely to services and facilities between the United States and any foreign country, and not to those between or within foreign countries.

than regulation, to assure the availability of customer premises equipment and enhanced services, and to allow carriers to participate in these activities on an unregulated basis, subject to safeguards to protect users of essential transmission services from potential monopoly abuses.

The Computer II decision has recently been upheld by the Courts, and is in full implementation in the domestic environment. But the FCC's well-reasoned determination (which IBM fully supports) that the basic/enhanced dichotomy is applicable to United States international telecommunications has encountered widespread, but misplaced, criticism, and is presently under reconsideration and appeal. As a result, deregulation of international enhanced services has been delayed, denying users the benefits of full and fair unregulated competition.

We are therefore pleased to see that that definition of "carrier" in section 601 explicitly excludes providers of information services, which we understand to be coextensive with enhanced services as defined by the FCC. S. 999 would thus properly limit the FCC's regulatory jurisdiction to providers of telecommunications services and facilities, or basic transmission, as the FCC has designated it.

The message of the FCC and recent Congressional proposals, including S. 999, is clear: only basic transmission need be regulated, and then only until it is subject to effective competition. Countries throughout the world are watching the United States model closely, and some are starting to move in a similar direction. It is essential that the United States maintain its leadership role in establishing an environment conducive to innovation in telecommunications and information services.

As is recognized in section 602, however, the provision of international telecommunications services and facilities is necessarily a joint undertaking between United States and foreign entities. Complete competition in international telecommunications cannot be achieved through United States regulatory or legislative fiat alone. There is a need for continuing dialog between the United States and foreign nations so that the effect of our forward-thinking policies on the interests of other nations is not misunderstood.

The confusion that has surrounded the FCC's deregulation of enhanced services is a case in point. Most foreign countries currently consider telecommunications services to be a government monopoly to be provided solely by telecommunications administrations. Many PTTs view some enhanced services not as information services, but as telecommunications services subject to their government monopoly. The PTTs fear an erosion of their monopoly revenues if such enhanced services should be provided over international private lines.

The genesis of the various concerns is the perception that the provision of international enhanced services necessarily entails the resale of international private line services in violation of CCITT Recommendation D.1. In reaction to this perception, some PTTs have threatened to impose volume charging on private lines, or to withdraw them entirely. This would prove a severe burden to current users of private line services, including providers of international data processing services.

CCITT Recommendation D.1 permits the use of full period, flat rate private line services for a customer's own communications requirements, including his provision of data processing services to others. It does not, however, allow a customer to resell such private lines for the provision of telecommunications services. Thus, a customer may not currently provide those international enhance services that are viewed as telecommunications by the PTTs through the resale of private line services.

The FCC, however, cognizant of the limitations on the use of international private lines, explicitly declined to apply the resale principle to the provision of international enhanced services, pending resolution of its international resale and shared use proceeding. It is important to recognize, moreover, that the deregulation of United States international enhanced service providers in no way impacts the ability of the PTTs to control the provision of such services within or across their own borders.

There is a way in which those enhanced services that are considered telecommunications by PTTs could be provided between the United States and foreign nations without violating applicable CCITT provisions. United States providers of such services should be allowed to obtain half circuits from the United States to the hypothetical mid-point, and negotiate operating agreements with PTTs for the joint provision of the services, just as United States international carriers do today. Since the PTTs would continue to derive revenues, at negotiated rates, for their part of the services, concerns for their monopoly revenues should be diminished.

PTTs, however, have often exhibited reluctance to negotiate with new United States entrants in international telecommunications, even when they are regulated carriers. This problem could be exacerbated as unregulated United States entities seek such agreements. CCITT Recommendations provide for such agreements only between PTTs, or with Recognized Private Operating Agencies (RPOAs) in coun-

tries, such as the United States, where telecommunications are provided by the private sector. To facilitate the provision of all international enhanced services, therefore, the FCC should be directed to grant RPOA status to all users that request it and that agree to observe the applicable provisions of the ITU regulations. Such status would also be necessary for carriers to provide telecommunications services deregulated in accordance with section 605 of the bill. In all cases, such status should be granted under the FCC's ancillary authority under Title I of the 1934 Act.

Transmission capacity

The nondiscriminatory availability of transmission capacity is essential to the provision of enhanced services, as it is for basic transmission services. Transmission capacity is the cornerstone on which telecommunications and information services are developed. If transmission facilities are made widely available, the services marketplace will be free to respond to diverse consumer needs with new and better services at ever lower prices.

In today's international environment, whoever controls international facilities essentialiy controls the availability and pricing of telecommunications and information services. While there are now choices to be made between transoceanic cables and international satellites, there may not as yet be fully effective competition in international facilities. Moreover, because only one end of international facilities terminates on United States soil, the cooperation of foreign PTTs is essential, particularly when an international circuit transits foreign soil to reach its ultimate destination.

United States carriers that control international telecommunications facilities should therefore be required to furnish facilities to all on reasonable request, including providers of telecommunications and information services and governmental and private users. This obligation acknowledges the scarcity of competitive alternatives in facilities, while allowing for increased competition in services and greater freedom of choice for users.

The FCC has recently provided for the nondiscriminatory availability of international satellite circuits by modifying its authorized user policy to allow anyone to obtain facilities from Comsat. But, like the Computer II decision, Authorized User II has been challenged before the FCC and in the courts. We therefore endorse S. 999's revision to the Communications Satellite Act that gives statutory endorsement to the FCC's decision.

S. 999 should also assure nondiscriminatory access to international cable facilities. In the case of TAT-7, AT&T has committed to providing circuits on an indefeasible right of user (IRU) basis to new international carriers. Such IRUs should also be made available to any noncarriers that enter into an operating agreement with a PTT for the provision of international enhanced services. As with the use of international satellite circuits, these entities should also be obliged to observe applicable ITU regulations and be certified upon request to the FCC.

Resale/shared use

The FCC found in its domestic proceedings that permitting resale and shared use serves the public interest and benefits both carriers and users. It has been deterred, however, in its efforts to bring the same benefits to international telecommunications in its international shared use/resale proceeding. As discussed above, the objectives of that proceeding are inconsistent with CCITT Recommendation D.1.

Nonetheless, because IBM believes that unregulated international resale and shared use can benefit the public, we are pleased that section 602 establishes this as a matter of United States policy. We commend the sponsors for providing that this be achieved through bilateral and multilateral negotiations. As a transitional mechanism, it may be appropriate to allow United States carriers to continue to restrict resale and shared use of international private line services in accordance with applicable CCITT recommendations. At the same time, however, carriers should be required to permit resale and sharing of such services, on a unregulated basis, by entities that have secured an operating agreement with a PTT or a foreign RPOA.

This is an area where the United States government can play a key role in encouraging competition. So long as the United States maintains a statesmanlike posture in advancing its pro-competitive policies through negotiations, we believe that the objectives of the Subcommittee in this area can be achieved.

Safeguards

The deregulatory approach of S. 999 clearly contemplates that at least some international carriers will offer both regulated telecommunications and unregulated telecommunications or information services.

There is a valid concern expressed by many parties in allowing carriers possessing "market power" in essential services and facilities to engage in unregulated activities. These carriers have a significant potential for imposing the costs of their unregulated operations on users of their regulated services and for engaging in other anticompetitive practices. It is therefore essential that a system of safeguards be established to avoid burdening ratepayers with the costs and risks of these carrier's competitive ventures and to allow a fully competitive marketplace to develop.

For this reason, the FCC should require carriers operating in both the regulated and the unregulated marketplace to establish an accounting system which properly separates all costs between their regulated and unregulated operations, in order to ensure that such carriers do not cross-subsidize their unregulated offerings with revenues from their regulated services, either domestic or international.

Some parties argue that carriers possessing market power in essential services should be required to establish separate corporate entities for their competitive offerings. Such separation may facilitate the establishment of separate accounting, but it does not eliminate the need for this basic requirement.

In addition, when a carrier uses its own regulated facilities to provide information services, it should be required to provide such facilities to its information service operations at the same rates, and under the same terms and conditions, as it provides them to unaffiliated entities. This would ensure the nondiscriminatory availability of transmission capacity discussed above.

TITLE II

While the United States has been a leader in establishing a pattern of unregulated competition in telecommunications, other countries are only beginning to move in this direction. The United States can encourage this trend through a coordinated United States policy espousing the benefits of competition in all aspects of telecommunications and information services.

IBM agrees with the sponsors of S. 999 that some mechanism for greater coordination in United States government international telecommunications policy-making is essential. Title II establishes a Task Force, chaired by the Special Representative for Telecommunications and Information, for that purpose. While this is only one of several alternative mechanisms that have been proposed recently, we believe it can be effective, provided that the Task Force remains alert to the dynamics of the rapidly evolving technological and marketplace environment. We therefore support the direction to the Task Force to establish a broadly based Advisory Committee representing the deverse private sector interests in this vital subject.

Once having established a coordinated policy position in the interest of the American people, the United States should vigorously seek, through bilateral and multilateral negotiations with foreign governments and PTTs and in appropriate international fora, to gain international support and cooperation in the implementation of increased competition and deregulation in United States international telecommunications. To this end, it is essential, as United States policy goals are defined, that they be included in the preparation of United States positions to the CCITT, and that intensive negotiations be held to revise Recommendations that inhibit the achievement of United States policy objectives.

SUMMARY

When the 1934 Act was enacted, effective competition in telecommunications was deemed not practical. But as telecommunications technology has advanced over the past quarter century, and converged with information processing technology, competition in telecommunications has evolved and has been demonstrated to be the preferred approach for the United States. This country has analyzed the technological and economic characteristics of the domestic environment and determined that it is neither necessary nor desirable to restrict competition in order to ensure universal service. The technological and economic characteristics of the United States international environment call for the same determination.

These, then, are the objectives which in our opinion United States international telecommunications legislation should enunciate: Endorsement of the FCC's procompetitive, deregulatory actions, with specific direction to forbear from unnecessary regulation; explicit limitation of regulation to the minimum necessary to ensure the universal availability of basic transmission services (including private lines) at reasonable rates; maximum feasible reliance on unregulated competition, so that marketplace forces can stimulate innovation and assure the availability of a wide range of telecommunications services as economically as possible; assurance that all carriers are allowed to participate in the competitive marketplace; adequate

safeguards to avoid burdening customers of facilities-owning carriers with the costs and risks of competitive offerings; assurance that United States international transmission facilities are available to all on a nondiscriminatory basis, so that users will have maximum flexibility in configuring their telecommunications and information networks; establishment of a mechanism for improved coordination of United States international telecommunications policy development of effective representation of United States interests in the international arena; and implementation of United States policies in a manner consistent with our treaty obligations and in consultation with correspondent nations, to the extent their legitimate interests may be effected.

We are pleased with the extent to which S. 999 embodies these principles as the foundation for United States international telecommunications policy. We look forward to working with your staff to assure that the bill as reported adequately addresses our mutual objectives.

STATEMENT OF M/A-COM, INC.

Although M/A-COM, Inc. did not participate in earlier hearings on S. 999, we are submitting this statement for inclusion in the hearing record. We wish to commend the Committee on Commerce, Science and Transportation and its staff for undertaking this inquiry. Consistent with the bill's competitive objective, we recommend several modifications which will provide a fair and open marketplace for companies such as M/A-COM that compete with the Communications Satellite Corporation (Comsat). In particular, we ask the Congress to require Comsat to divest all competitive activities, to mandate full access to INTELSAT information, and to open the "instructional process" to full public participation.

M/A-COM'S INTEREST IN S. 999

M/A-COM is recognized as one of the world's leading manufacturers of digital satellite communications equipment. M/A-COM is a principal designer and supplier of satellite communications equipment used with the INTELSAT, INMARSAT and numerous domestic satellite systems. For example, M/A-COM has supplied Time Division Multiple Access (TDMA) satellite terminals to numerous U.S. domestic satellite operators and was a member of the consortium that developed the prototype of the INTELSAT TDMA terminals.

Comsat, through its subsidiary Comsat General Telesystems and other subsidiaries, has entered the telecommunications equipment manufacturing business. Telesystems has begun developing and marketing equipment for use with the INTELSAT and INMARSAT systems and has used Comsat's unique relationships with INTELSAT and INMARSAT to gain unfair competitive advantage.

COMSAT'S TACTICS HAVE UNFAIRLY DISADVANTAGED COMPETITORS

As the United States representative in INTELSAT, Comsat is a monopoly provider of international satellite channels and uses that monopoly to generate substantial revenues. Not only have its subsidiaries been directly cross-subsidized out of revenues derived from monopoly ratepayers, but Comsat has also used other unfair tactics to attempt to gain marketplace advantages for Telesystems. These tactics include: cross-subsidization, improper allocation of shared costs, unequal access to technical information, and the ability to influence INTELSAT's technical standards development.

Comsat's role at INTELSAT puts it in the position to gain an unfair advantage in its competitive manufacturing activities. This is because Comsat's manufacturing subsidiaries have unequal and discriminatory access to crucial information and data regarding the INTELSAT system. Moreover, Comsat Labs' research and development that is funded by monopoly ratepayers is available to Comsat's competitive affiliates without proper compensation to the monopoly ratepayers.

Comsat can also use its position to limit competition by influencing earth station standards and satellite design for the INTELSAT system. Because of engineering tradeoffs in network design, the technical capabilities of the space segment affect the feasibility of alternative earth station configurations. For example, by restricting the capability of INTELSAT satellites, Comsat could thus limit the ability of the system to serve earth stations with relatively small antennas, and thereby limit user flexibility and constrain the competitive options of carriers other than Comsat.

COMSAT'S ACCESS TO INTELSAT INFORMATION GIVES IT AN UNFAIR COMPETITIVE ADVANTAGE

Comsat's position at INTELSAT provides it with access to information regarding earth station standards and satellite design, while its competitors do not have access to this information in a timely fashion. Access to this information can provide Comsat's manufacturing subsidiaries with "lead time" advantages in developing new equipment to meet INTELSAT's evolving needs.

In addition, Comsat's competitive subsidiaries have access to research and development that is funded by monopoly ratepayers. Access to such research and development, in the absence of a proper allocation of costs, represents an unjustified subsidy from monopoly revenues.

Because Comsat can give its competitive affiliates discriminatory access to INTELSAT information, we ask that Comsat be required to file all such information to which it has access with the FCC for public disclosure. That information should include documents generated by the Board of Governors, Board of Governors' subcommittees and Assembly of Parties. This is particularly important to encourage U.S. manufacturers to compete with international satellite equipment suppliers; now, foreign manufacturers often have an advantage over U.S. manufacturers because foreign INTELSAT signatories pass on this information to their manufacturers while Comsat does not.

COMSAT SHOULD DIVEST ITS COMPETITIVE ACTIVITIES

To prevent Comsat's competitive affiliates from gaining unfair competitive advantages through access to INTELSAT information and monopoly funded research and development, Comsat must be required to limit its activities solely to representing the United States at INTELSAT and INMARSAT and related activities. All affiliates and divisions that engage in any other activities must be divested.

Divestiture is required because the FCC has shown historically that it is unable to regulate corporations that have large monopoly revenues and substantial market power. FCC decisions of last year did not go far enough to separate Comsat's competitive activities from its monopoly activities. Cross-subsidization and improper allocation of common costs still occur. For example, Comsat Laboratories research and development activities are largely funded by the monopoly ratepayers, yet substantial benefits flow to the competitive activities without proper cost allocations. For the same reason that divestiture was the best solution to Bell System regulatory problems, we believe that divestiture is the best solution to Comsat regulatory problems.

To assure that divestiture occurs expeditiously, Comsat must be required to submit a plan to the FCC within 180 days, and the FCC must be required to approve or disapprove the plan within 60 days. If the FCC disapproves the plan, Comsat should be allowed to file an amended plan. But, if it fails to amend the plan within 30 days, the FCC should have the authority to prescribe a plan. The divestiture plan must assure that the parent retains sufficient resources and assets to enable it to carry out its INTELSAT and INMARSAT duties.

COMSAT'S ABILITY TO INFLUENCE INTELSAT TECHNICAL DECISIONS MUST BE CONSTRAINED BY OPENING THE INSTRUCTIONAL PROCESS

Comsat must also be prevented from restraining competition by using its ability to influence INTELSAT earth station standards and satellite design and by improperly influencing other INTELSAT decisions. Comsat may attempt to influence those standards and designs to limit competition both before and after divestiture. For example, Comsat could use its voting power to restrict INTELSAT's potential to adapt to a new U.S. earth station ownership policy that would permit ownership independent of Comsat. We support the provision of S. 999 that authorizes the FCC to permit independent earth station ownership. However, we believe that additional provisions are necessary to prevent Comsat from using its position to limit INTELSAT's ability to adapt to that new policy.

It is necessary to revise the process whereby the U.S. Government instructs Comsat on positions to take at INTELSAT meetings ("the instructional process"). Today, the U.S. Government treats Comsat as its agent and trusts Comsat to represent the U.S. public interest in INTELSAT decisionmaking. However, the public is not allowed to know the instructions, much less participate in the instructional process. Furthermore, there is no oversight to monitor Comsat's performance of these instructions. M/A-COM is concerned that Comsat may be influencing INTELSAT decisions in a way that would benefit Comsat's competitive interests.

First, the authority of the government to issue instructions must be clarified. Congress should clearly authorize the President and the FCC to issue instructions and ensure that in the event of a conflict among such instructions, the President's instructions shall prevail.

Second, the instructional process must be opened to the public. Upon the receipt of an INTELSAT agenda, the FCC must provide a two week opportunity for comment and a one week opportunity for reply comment. Third, Congress should ensure that instructions issued by the President and the FCC are binding. Finally, in order to assure that Comsat complies with the instructions, Congress should authorize the President to appoint a government representative to participate in all of Comsat's activities with respect to INTELSAT, and it should impose a civil penalty for a failure to comply with the instructions.

In sum, Congress should require Comsat to divest its non-INTELSAT/INMARSAT activities, assure equal access to crucial INTELSAT information, and revise the instructional process. We will be pleased to provide the Committee with text for the amendments that we have recommended.

STATEMENT OF MAURICE B. TOBIN

This is the statement of Maurice B. Tobin, a partner in the District of Columbia law firm of Tobin and French, and Chairman of the Tobin Foundation, a non-profit organization active in international affairs and telecommunications. The Foundation has focused on raising the level of understanding of international communications issues. The Foundation leased Leeds Castle outside London and invited 25 world leaders to be its guests for a conference on "Structural Issues in Global Communications". A summary of this conference was respectfully presented to the Senate Commission. Serving as a U.S. Delegate to the 150-nation ITU Plenipotentiary Telecommunication Conference in Keyna last year and serving on the U.S. Council for World Telecommunication Year 1983, I have seen now and over the years, the importance of your bill S. 999.

The thrust of my testimony relates to Title II of the Bill, the "International Telecommunications and Information Coordination Act of 1983", and Title III, Section 306, the "Assistance Secretary of State for Telecommunications Affairs." However, before I address the substance of the Bill, I would like to express my profound appreciation of the excellent work of this Subcommittee, and its Chairman, Senator Goldwater, in persisting with the difficult task of proposing legislation to enhance the position of the U.S. government and industry in the international telecommunications arena. Without Senator Goldwater's pioneering efforts in the communication field, our country could not have become a world communication leader.

INTRODUCTION

The lack of coordination of the Federal policymaking process, as it relates to international telecommunications, increasingly is causing concern in our telecommunications industry and among those in government charged with the daily decision-making responsibility for international telecommunications. For example, preparation for International Telecommunications Union conferences, OECD meetings, or bi-lateral negotiations cannot be done with the confidence that the results reflect a unified U.S. government perspective on the significant issues discussed in these forums.

I recognize that the newly created position of Coordinator for International Communications and Information Policy, under the Undersecretary of State for Security Assistance, Science, and Technology, which Ambassador Diana Lady Dogan ably fills, is a great stride in the direction of developing coordinated Executive Branch policy. However, the people of this country have a great stake in the government's ability to articulate and carry out effective international telecommunications policy. The stake is so high as to warrant the consistent attention of the President himself. This Bill establishes that power right within his office. In doing so, it improves significantly the opportunities for the United States to develop and administer effective policies.

The legislation creates four new and interrelated functions to enhance the process of policy development. In my view, each of the four is vital. In an area of public policy long characterized by turf battles and power vacuums, this master plan for approaching cooperative and integrated decision-making represents a giant step forward. I would like to comment on each of the four functions.

THE OFFICE OF THE SPECIAL REPRESENTATIVE FOR TELECOMMUNICATIONS AND INFORMATION

The Bill, in Section 203, sets out an Office of the Special Representative for Telecommunications and Information as a unit within the White House. The Special Representative would serve at the top eschelon of government and represent the United States at the many international meetings that are scheduled each year in the international telecommunications arena. This person would also become the principal advisor to the President and to Congress on international telecommunications policy, and coordinate the policymaking process within the Executive Branch.

Creation of this Office would at long last elevate the issues of international telecommunications and information policy to a highly visible level. At the same time, both U.S. industry and foreign governments would be able to discuss their concerns about U.S. international telecommunications policy with a single authoritative entity within the Executive Branch. Last year, I met at Leeds Castle, in the United Kingdom, with many distinguished authorities on telecommunications from around the world. The occasion was the Tobin Foundation's meeting on "Structural Issues in Global Communications". I was struck by the frequency of the lament that there is no one place within the U.S. government with which foreign governments can discuss their concerns about trends in U.S. policy. The establishment of the Office of Special Representative would resolve the problem.

In my view, this Office should have a small, highly qualified staff, with the final say in interagency disputes about both process and policy. In short, other Executive Branch agencies should look to the Office, not just for guidance, but for direction. The Office should be able to command the resources of the appropriate Executive Branch agencies to do research or to write position papers whenever needed. In that way, the Office can keep its visibility and productivity high, while at the same time keeping its expenses low. It does not need to grow into another Office of Telecommunications Policy, and will be more effective by refraining from this natural temptation of bureaucracy.

THE INTERNATIONAL TELECOMMUNICATIONS AND INFORMATION TASK FORCE

This task described in Sections 204 and 205, would be chaired by the Special Representative, and would involve key Executive Branch Agencies at the level of Assistant Secretary. As with the Office of Special Representative, this level of participation denotes the importance of the interests at stake. Until now, significant decisions about international telecommunications policy have generally been made at the middle-management level without adequate attention from those with ultimate responsibility for agency policy. The Task Force would upgrade the level of involvement within each agency and, in addition, would establish a formal mechanism for coordination among the many Federal agencies which today make international telecommunications and information policy.

I am aware that the State Department's Senior Interagency Group for International Communications and Information Policy (SIG), chaired by Undersecretary William Schneider, has been constituted to review the significant actions of Executive Branch agencies in international telecommunications policy. However, the SIG does not meet regularly, and has no legal authority to take collective action. In addition, the State Department, although chairing the SIG, has no greater power than most of the other agencies represented on the SIG. Because the Task Force would be required to develop non-duplicative, coordinated policy and to do so under direction of the Special Representative, it would have substantially more ability than the SIG to develop and ensure the implementation of unified policies.

THE ADVISORY COMMITTEE ON INTERNATIONAL TELECOMMUNICATIONS AND INFORMATION

This public advisory committee, set out in Section 208, is, in my view, another important component of successful policy development in the area of international telecommunications. There is a surfeit of public advisory committees to the Executive Branch focusing on various aspects of international telecommunications and information policy. Not surprisingly, there is no coordination among them, and none individually has a broad perspective on the field.

The committee conceived in S. 999 would have a regular, formalized relationship with the Task Force which would be required to seek its advice and to share information with it. Industry, labor, consumers, and the press, through their representatives on the committee would have an almost unique opportunity to influence the policymaking process. In an area where so many elements of society have much to

gain or lose from the outcome of Federal policies, the assurances of meaningful participation built into S. 999 are particularly vital.

THE ASSISTANT SECRETARY OF STATE

This position which would be created by Section 306, would fill the vacuum created in the State Department by the transfer of the Coordinator's duties to the Office of the Special Representative. In my opinion, it is important to establish a continuing function within State, at a high level, so that there will be a focal point for monitoring and advising on the diverse telecommunications-related activities of that Department. In addition to avoiding duplication and conflict among the agencies at State, the Assistant Secretary, through consolidation of viewpoints and recommendations, could increase the effectiveness of State's participation in the Task Force.

CONCLUSION

I would like to reiterate that I believe the plan embodied in S. 999 to reorganize the Executive Branch for policymaking mechanisms in international telecommunications to be soundly conceived and to make good operational sense. It is an even stronger proposal than was comtemplated by S. 2469, the Bill which this Subcommittee introduced into the 97th Congress. The proposed organizational structure immeasurably strengthens the ability of the U.S. government to make effective, coordinated policy in international telecommunications and information. Again, I wish to congratulate the Subcommittee members and staff on designing a mechanism that, if implemented, could vastly improve the Federal policymaking process in international telecommunications in the years to come.

Thank you.

U.S. COUNCIL FOR INTERNATIONAL BUSINESS,
New York, N.Y., May 24, 1983.

Hon. ROBERT PACKWOOD,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR PACKWOOD: I am writing to you in my capacity as chairman of the Committee on Transborder Data Flows of the United States Council for International Business. I would like to express the Council's support for your work on the reorganization of the Executive Branch to more efectively formulate and implement U.S. international communications and information policy. The Council has followed closely the debates in Congress concerning this important work.

It is our position that there is serious need to raise the level of attention and provide a clear mandate for the management of international communications and policy issues within departments and agencies of the U.S. Government. We are also supportive of efforts to achieve coordinated decision-making. Most important, we believe there is crucial need for expertise, continuity of management, adequate resources and the essential understanding of the international environment and of the international businesses which use as well as supply telecommunications and information. We therefore welcome the attention that your committee is devoting to this important policy matter.

The U.S. Council represents over 250 U.S. international companies and is the major U.S. trade association concentrating solely on international economic and business issues. As the U.S. member of the International Chamber of Commerce and the Business and Industry Advisory Committee to the OECD, the United States Council has a history of interest and activity in the field of international telecommunications and information policy. As your committee continues to work on reaching a solution to the problem of government reorganization in the communications policy area, we stand ready to offer our services in this important work.

Sincerely,

JOAN E. SPERO,
Chairman, Committee on Transborder Data Flows.

COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION,
Washington, D.C., June 10, 1983.

Hon. BARRY M. GOLDWATER,
Chairman, Subcommittee on Communications, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Computer and Business Equipment Manufacturers Association (CBEMA) has taken a keen interest in past and present legislative efforts designed to improve the position of leadership of the United States in the area of international telecommunications and information services and products. As an association representing a "sunrise industry," we are vitally concerned that any such legislation foster a regulatory and legal climate in which the phenomenal advances in the U.S. information industry over the past four decades continue, and to the extent possible encourage an international receptivity to the innovative products and services resulting from these advances.

CBEMA believes that S. 999, the "International Telecommunications Act of 1983," recently introduced by you and your co-sponsors supports that objective and provides recognition of the vital nature to the economy of the United States of international telecommunications and information products and services.

A key part of the bill is the atempt to ameliorate the present situation within the United States Government for the development and implementation of our international telecommunications and information policies. This is to be accomplished by the creation of a high level office within the Executive Branch charged with this responsibility, and the concomitant responsibility for the articulation of these policies at international meetings which the United States attends under treaty obligations. Other key principles of the bill foster the deregulation of international telecommunications services, with recognition of international comity concerns. In addition the bill encourages free and open competition in international commerce with respect to the products and services of the United States information industry. CBEMA supports all of these major goals.

However, there are some areas of concern with respect to certain provisions of the bill. I am attaching to this letter comments addressing matters which we would very much like to see accommodated by the legislation, or in the language of the report on the bill.

With respect to the issue of improving the U.S. Government structure for international telecommunications and information policy making, I believe that it is important to stress that CBEMA in its comments to you on international telecommunications legislation prior to the introduction of S. 999 stated that we give total support to the Department of State in its recent actions to discharge its responsibility under current Presidential directives with respect to international telecommunications and information issues. We believe these actions in no way conflict with the structural proposals set forth in S. 999. Indeed, we believe these activities support the concepts of S. 999 by building the nucleus of expertise necessary for the proposed structure.

I would like to conclude by stating that CBEMA supports the objectives of S. 999; and we plan to continue to work with your staff regarding the remaining concerns noted herein. We request that this letter and the atached comments be included in the record.

Very truly yours,

VICO E. HENRIQUES,
President.

Enclosure.

CBEMA COMMENTS ON S. 999, THE "INTERNATIONAL TELECOMMUNICATIONS ACT OF 1983"

FINDINGS

Section 2(1).—CBEMA supports the findings of the bill; we note, however, that although the bill contains many references to "information services" there is no mention in this section of "information" technologies, but rather only mention of rapid advances in telecommunications technologies that makes possible increased competition among providers of international telecommunications services. This section should include reference to rapid advances in "information" technologies, as well as telecommunications technologies.

Section 2(3).—The section as written states that it is essential to encourage the entry of new carriers in the offering of international telecommunications services and facilities. This section should be revised to point out that it is essential to en-

courage the entry of new entities in the offering of telecommunications and information services.

INTERNATIONAL TELECOMMUNICATIONS

Definitions

Section 601(2) "information service" is defined as the "offering of a capability (to manipulate information) which may be conveyed via telecommunications. . . ." Further, the capability "for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information which may be conveyed via telecommunications. . . ." contains an ambiguity in the phrase "may be conveyed." The reference to "may be" does not indicate whether this phrase is intended to refer to the permissibility or capability of conveying information via telecommunications; this should be clarified.

Section 601(3) defines "regulated telecommunications service," to comprehend facilities. The reference to "facilities" in a definition of "service" should be eliminated, because services are provided over facilities but are not, in and of themselves, facilities.

Section 601(4) defines "resale", but does so in a manner which differs from the FCC's existing definition. The basis for the inconsistency is not apparent. We believe the definition should be as follows: "an activity where one entity subscribes to the communications services and facilities of another entity and then reoffers communications services and facilities to the public (with or without 'adding value') for profit." 60 FCC 2d, 261,271.

Section 601(5) defines "shared use", and similarly, does so in a manner which differs from the FCC's existing definition. The basis for the inconsistency is not apparent. we believe the definition should be as follows: "a non-profit arrangement in which several users (. . .) collectively use communications services and facilities obtained from an underlying carrier or a resale carrier, with each user paying the communications-related costs associated with subscription to and collective use of the communications services and facilities according to its pro rata usage of such communications services and facilities." 77 FCC 2d, 840.

Section 601(7) defines "international telecommunications carrier" as "any person, including any government or independent government entity, which offers any international telecommunications service for hire." The phrase "to the public" should be added after the word "offers" to make clear that intra-corporate use of an international telecommunications service would not render the user a "carrier." In addition, it should be made clear that the shared use of telecommunications equipment facilities or services, which does not render the government a carrier, would not render private entities engaged in sharing a "carrier."

STATEMENT OF POLICY

Section 602(b).—CBEMA supports the statement of policy, and we are particularly pleased that it specifically states that the interests of other sovereign nations are to be considered in the implementation of U.S. policy. The report language to this section should make some reference to U.S. treaty obligations regarding international telecommunications such as the International Telecommunications Convention, the ITU and its subgroups such as the CCITT. In some cases achievement of the goals set forth in the policy statement may require discussions with these groups to allay concerns about perceived conflicts, particularly with certain CITT recommendations.

AUTHORITY OF THE COMMISSION

Section 603(a).—This section grants the Commission the authority to forbear from regulation, and it mandates the Commission to "revise, reduce, or eliminate any rule or regulation" with respect to international telecommunications service or carrier as competition develops, unless there are adverse consequences on the national security or the economic viability of U.S. suppliers of telecommunications equipment or services relative to competing foreign suppliers of such products.

The mandate to the Commission to eliminate regulation could be interpreted to require the Commission in all circumstances to eliminate or reduce or revise regulations rather than to forbear. Such a result would eliminate much of the flexibility of forbearance. The report should make it clear that this section does grant the Commission the authority to forbear from regulation.

CLASSIFICATION OF SERVICES/TRANSITIONAL PROVISIONS OF CERTAIN SERVICES

Sections 604 and 605: Section (604) provides the Commission with authority to choose to regulate or deregulate international telecommunications services or facilities (except CPE--see Section 601(8). Section (605(a)) sets up a transitional mechanism which provides that international telecommunications service which is being provided under tariff on the date of enactment shall continue to be offered under tariff for not less than one year from such date. Section 605(b) requires the Commission to hold an expedited hearing not later than one year after enactment to determine which international telecommunications services must continue to be regulated under Section 604(b).

Both Sections 604 and 605 would place greater demands on the Commission to report on and analyze the international market for telecommunications services and facilities. (See "FCC Needs to Monitor a Changing International Telecommunications Market" (B-21512, GAO/RCED-83-92, March 14, 1983)). The report should recognize that the Commission would likely need additional funding and/or personnel to carry out this mandate.

On August 4, 1982 the Federal Communications Commission ruled that the policies of Computer Inquiry II, including the detariffing of new Customer Premises Equipment (CPE), and the finding that enhanced services fall outside the scope of Title II regulation, applies internationally as well as domestically.

Although the Commission decided a narrow legal issue relating to the scope of its jurisdiction under Title II of the Communications Act and it left an opportunity for international consultation and cooperation, the reaction by the foreign Post, Telegraph, and Telephone entities (PTTs) to the decision was negative. It is clear from the responses received that there is little understanding abroad as to the basic/enhanced services dichotomy which is fundamental to the Computer Inquiry II Order. In addition, a number of PTTs incorrectly perceived this decision as prejudging the FCC's 1980 Resale and Shared Use proceeding, and they perceive that its implementation would violate existing CCITT recommendations. It should be noted that the Commission expressly stated in the Computer II decision that it does not prejudge the international resale issue still pending before it.

What that decision will allow is that providers of international enhanced services would not be required to obtain Section 214 authority under the Communications Act of 1934 before offering such services. Since there is confusion at best among some PTTs as to the meaning of these definitions, they tend to perceive some enhanced services as telecommunications and as such they claim jurisdiction over them under their statutory monopoly.

The PTTs postulate that without regulatory requirements in the U.S. over providers of these international enhanced services the PTTs will be unable to control how international telecommunications facilities and services are used. The PTTs have ruled that private lines not be used by a customer to offer any type of international telecommunications service unless the customer is a Recognized Private Operating Agency (RPOA). They believe that private lines would be misused by unlicensed entities to divert telecommunications services from carriers with concomitant revenue losses to the PTTs. A possible PTT retalization is to discontinue the availability of private line facilities and migrate users of private line facilities to usage-sensitive services or PTT provided value-added networks. This migration would result in substantially higher costs to U.S. firms using private lines, and less flexibility to present users of private line services.

The "International Telecommunications Act of 1982", S. 2469, which was favorably reported by the Committee proposed a novel solution to the problem when it stated in the report on the bill: "In order to fulfill the U.S. obligation under Article 44 of the International Telecommunications Union (ITU) Convention to 'authorize' private operating agencies to establish and operate telecommunications and to engage in international services, the FCC should grant private operating agency status to enhanced service providers that request such status. Such certification could be like that of a manufacturer's certification under Part 68 of the FCC's rules." (See Senate Report on S. 2469 at page 4). The report on S. 999 should also contain language providing that the Commission could accomplish such a program through its ancillary authority under Title I of the Communications Act of 1934, or that it could be done, perhaps, by the Department of State in its role as the US representative to the International Telecommunications Union (ITU). Obviously such a mechanism could also be used for carriers to offer international telecommunications services on an unregulated basis.

INTERCONNECTION

Section 606: Section 606(a) requires "every international telecommunications carrier," upon reasonable request to establish interconnection of its regulated service or facilities with any telecommunications carrier, any facility or private or Government telecommunications system, and any CPE which is owned or leased by a customer of such carrier. The report language accompanying the bill should make clear that the competitive market place can be relied upon to stimulate interconnection of entities offering unregulated services.

Section 606(b) mandates the Commission require telecommunications carriers that offer for hire both domestic and international telecommunications services be treated as a separate domestic carrier and a separate international carrier for the purposes of administering the interconnection requirements.

The report should clarify that additional safeguards are necessary when a single entity provides both international telecommunications and information services, for example, separate accounting systems, and structural separations. These same safeguards should also apply when a single entity provides both regulated and unregulated telecommunications services.

INTERNATIONAL TELECOMMUNICATIONS FACILITIES

Section 608: This section gives the Commission authority to assess U.S. carrier proposals for construction and utilization of international telecommunications facilities. The section should be revised to make clear that other entities can engage in facilities planning and make proposals in the area.

TITLE II—INTERNATIONAL TELECOMMUNICATIONS

CBEMA general comments

Title II, the "International Telecommunications and Information Coordination Act of 1983," would establish the Office of Special Representative for Telecommunications and Information in the Executive Office of the President, and the International Telecommunications and Information Task Force within the Executive Branch, to bring together the fractionated responsibility and authority inherent under the current structure, and to more permanently establish this responsibility under statute. CBEMA believes such improved coordination is essential to develop and maintain comprehensive policies to address these critical issues consistent with the requirements of the U.S. total foreign policy. In addition the bill establishes a system of checks and balances through a system of reports to Congress to track the progress of the changes it requires.

CBEMA has stated previously in comments submitted to the Committee prior to introduction of S. 999, that we support the Department of State in its recent actions to discharge its responsibility under current Presidential directives with respect to international telecommunications and information policy issues. CBEMA believes strongly that this action in no way conflicts with the structural proposals set forth in S. 999. Moreover, we believe that these activities support the concepts of S. 999 by building the nucleus of expertise necessary under the structure proposed by the bill.

INDEPENDENT DATA COMMUNICATIONS
MANUFACTURERS ASSOCIATION, INC.,
Washington, D.C., June 22, 1983.

Hon. BARRY M. GOLDWATER,
Chairman, Subcommittee on Communications, Senate Committee on Commerce, Science, and Transportation, Russell Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Although public attention to telecommunications issues has largely been directed at domestic developments, S. 999, the International Telecommunications Act of 1983, recognizes the increasing importance of international telecommunications and of the institutions that affect international telecommunications policy. S. 999 thus makes a valuable contribution to the public policy debate over international telecommunications issues. In the view of the Independent Data Communications Manufacturers Association ("IDCMA"), however, certain revisions and clarifications of S. 999 are necessary in order to ensure that competition in the provision of international telecommunications goods and services continues to grow.

As manufacturers of sophisticated customer-premises equipment ("CPE") used in computer communications, our goal in any telecommunications legislation, whether

domestic or international, is to promote fair competitive opportunities for independent CPE manufacturers (those not affiliated with communications carriers). As you are well aware, CPE competition benefits not only the manufacturers of such equipment, but consumers as well. Users in the U.S. have directly benefited from the reduced costs, increased innovation, and other salutary consequences of competition, and they have indirectly benefited from the substantial contribution made by independent manufacturers to the U.S. balance of trade. As competition has increased, the benefits to the American public have grown proportionately.

THE NEED FOR REGULATORY FLEXIBILITY

Competition will continue to grow, and consumers will continue to benefit, only if regulatory flexibility is preserved. Because the telecommunications industry is changing rapidly, the Federal Communications Commission needs to retain the power to increase, decrease, or simply change certain regulations as circumstances warrant. Prudent deregulation recognizes the need to retain certain competitive safeguards at the time that outmoded requirements are discarded. Substantial deregulations has already taken place under existing law, but not by sacrificing the interests of users and manufacturers. This pattern should continue.

It is for this reason that we respectfully suggest that Sections 604 and 605, which require the FCC to classify services as either "regulated" or "deregulated," are too inflexible. These sections, together with Section 603, overemphasizes deregulation of carriers and give too little attention to safeguards needed to ensure competition in adjacent markets, such as CPE. Because these sections adopt an all-or-nothing approach, once a service is deregulated it is not subject even to minimal, but essential, competitive safeguards. In IDCMA's view, the better approach would simply be to confirm the Commission's authority to forbear from regulation.

Unlike the flash-cut deregulation currently embodied in the bill, a "forbearance" approach would permit the Commission to tailor the nature and degree of regulation to the precise circumstances of specific carriers, services, and markets. In contrast, requiring a determination that would preclude any regulatory oversight is likely to deter the Commission from making a finding of "effective competition." S. 999's current language might therefore actually slow the progress of deregulation.

The forbearance approach is also preferable to the "effective competition" aproach because it is more in tune with the realities of the international telecommunications marketplace. As recognized by S. 999's "Statement of Policy," the provision and regulation of international telecommunications services and facilities involve other "sovereign nations." Although the bill quite properly acknowledges the need to consider the interests of sovereign nations in implementing United States policy, Sections 603–605 do not direct the Commission to consider these interests in implementing the bill's deregulatory provisions. Again, a more flexible approach to deregulation would better serve the purposes of the bill.

IDCMA therefore urges you to consider replacing Sections 603–605 with a statutory confirmation of the FCC's authority to forbear from regulation. Congress can and should establish the guiding principles, but, as the expert agency responsible for dealing with complex and changing circumstances, the Commission should have flexibility to implement telecommunications policy. A forbearance approach best accommodates the need to balance the goals of promoting competition and minimizing regulation.

THE NEED FOR COMPETITIVE SAFEGUARDS

Whether or not competition among carriers becomes sufficiently developed to justify an end to rate regulation, certain basic competitive safeguards are needed to protect the interests of manufacturers and users. The continued growth of CPE competition requires that all facility-owning carriers be subject to certain minimal ground rules. The two that have proven to be most beneficial to competition and the user public involve interconnection and information disclosure.

An elemental interconnection requirement will ensure that all carriers provide nondiscriminatory interconnection to all CPE that meets uniform technical standards established under the aegis of the Commission. Information disclosure rules will ensure that all carriers disclose, in a timely and nondiscriminatory manner, all information relating to network design, technical standards, and changes in the network that affect the interconnection and interoperation of CPE. Although such requirements would constitute only a minimal burden for carriers, they would do much to promote continued progress toward a competitive CPE marketplace.

S. 999 currently requires interconnection only of regulated carriers and is altogether silent with respect to information disclosures. In IDCMA's view, all facility-

owning carriers should be subject to these basic competitive safeguards. We therefore urge you to amend S. 999 to include interconnection and information flow requirements for all facility-owning carriers.

We would be pleased to discuss these proposals with you or your staff.

Sincerely,

CHARLES P. JOHNSON, *Chairman.*

○

ERRATA

International Telecommunications Act of 1983

The above hearing before the Senate Committee on Commerce, Science, and Transportation was assigned an incorrect publication number.

The correct designation is S. HRG. 98–166.

S261-41